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No. 592

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

SHENANDOAH VALLEY BROADCASTING, INC., ET AL.,

Appellants,

against

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO JURISDICTIONAL STATEMENT

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Opinion of Hon. Sylvester J. Ryan, District Judge. Filed September 14, 1962

[Caption Omitted]

OPINION

RYAN, *J.*

This petition, filed by more than 335 local television stations situated throughout the United States, seeks fixation of a reasonable royalty for a license under Section IX(A) and (B) of the Amended Consent Judgment, entered on March 14, 1950 in the antitrust suit entitled *United States v. ASCAP*. While theoretically the petition is brought under the provisions of the decree for the fixing of fees, what it really seeks from ASCAP is a radically different license from that under which petitioners have been operating under the decree for the past twelve years and only secondly the fixing of a reasonable fee for such license.

The type of license sought is neither the blanket nor per program license described in the judgment. Petitioners would have a composite sort of license, containing a little bit of both, which would grant them the right to use any, some or all of the compositions of ASCAP's repertory on all their locally-originated broadcasts, while excluding from such license music performing rights for network programs and prerecorded material produced after February 28, 1962 by persons other than petitioners; as to those, petitioners would demand that the rights be secured, cleared and paid for at the source.

Petitioners made written application to ASCAP for such license and upon ASCAP's refusal to issue such license, they filed the petition now before us.

Opinion of Hon. Sylvester J. Ryan, District Judge.
Filed September 11, 1962

The underlying and immediate question raised by this petition is the court's power under the decree to compel ASCAP to issue such license; until that is determined the question of a fee under such license is not reached.

It is petitioners' position that the power to fix reasonable fees encompasses the power to fix a type of license which the court finds to be reasonable; that this construction of the decree is justified by the objectives and purposes of the judgment and that consequently no amendment to the decree is necessary in order to grant the application.

The government is in accord with petitioners on the principle that if the court finds the type of license requested to be reasonable, it has the power to compel its issuance; it, however, expresses no opinion on the reasonableness of the license. And it is ASCAP's position that, apart from the express prohibitions and restrictions as to the types of licenses it may not force on an applicant and the affirmative duty it has to offer upon request by an applicant a choice of the types of license enumerated in the judgment, it is free to negotiate with an applicant for a particular kind of license on particular terms, and that, therefore, the court lacks power to direct the issuance of the license sought, irrespective of its reasonableness (which it strenuously disputes).

We agree with the position taken by ASCAP, for the mere fact that a particular license requested may be more reasonable than that which has been given in the past, does not impose upon ASCAP the duty to grant such license,

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nor does it give the court additional powers not contained in the amended judgment.

Until 1949 ASCAP had granted royalty free licenses to all television stations for the use of its repertory; this was in an endeavor to assist the stations and to enable the industry to gain stability. In 1948 ASCAP suggested that the television industry negotiate with it for television licenses. Local and network blanket television licensing agreements were made in 1949, 1954 and 1958; substantially the same provisions were contained in each agreement. The petitioners, all local stations, have operated and continue to operate under a local blanket license granting them the right to play the entire repertory of ASCAP on all locally-originated programs. For this license they pay a fee which is based on a percentage of their "net receipts from sponsors", excluding any transcribed programs which ASCAP licenses at the source. Petitioners, dissatisfied with this type of license, would have the court cast the burden of paying for the performance rights on the pre-recorded programs on the producers rather than on petitioners; a right and option which the producers now have under their decree and which ASCAP is compelled to grant them. ¶ V-B

Nowhere in the judgment is there any provision explicitly or impliedly requiring ASCAP to issue the type of license requested, and petitioners do not so urge. They do argue, however, that the granting of such license would further the objectives of the judgment as a whole whereas a denial would frustrate them, and that looking beyond the

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exact wording of the decree, as a court of equity must, the power of this court to compel the issuance of the license sought is clear.

More specifically, petitioners in support of their application point to Sections VI and IX as giving this court "broad equitable powers" to grant the type of license they seek.

Section VI provides for the granting of a non-exclusive license to perform "all of the compositions in the ASCAP repertory." While this provision standing alone might lend itself to an interpretation that "all" could encompass a direction to grant licenses on "any or some" as desired by an applicant, when read with the sentence following it and with the other provisions of the judgment, particularly Section VII (B) and (C), it is clear that "all" refers to a license to include the entire repertory as distinguished from the other type of license which is limited to one or more specified compositions. The balance of this Section VI deals with just such a license.

The entire Section IX, which speaks of a fee for the "license requested" following application for a license on "any, some or all" of the compositions, deals with the procedure for determining reasonable license fees, not types of licenses. The words "license requested" do not mean that an applicant for a license is given the right under the decree to compel ASCAP to give any type of license it demands and have this court fix the fee. Each section of the Amended Judgment must be read and interpreted in the light of the entire judgment. (*Swift & Co.* v. *United*

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States, 276 U. S. 311, 48 S. Ct. 311, 72 L. Ed. 587 (1928). The world-wide license requested does not remove the limitations as to the extent, type and nature of licenses found in the other provisions of the judgment.

In Section IV (E), ASCAP is restrained from negotiating with any motion picture theatre exhibitor for a license to exhibit movies that use its compositions. This section makes no mention of television broadcasters, who are in many respects similarly situated to the theatre exhibitors. It is plain that the television broadcasters were not intended to be included within the prohibitions of Section IV (E).

Section VII deals primarily with the computation of fees for radio and television broadcasting. Section VII (B) provides that ASCAP must issue per-program licenses, on written request, and that the stations be given an economic choice between per-program and blanket licenses—there its obligation ends. There is no mention made of any type of license other than per-program or blanket. Section VIII refers to "the various types of licenses", clearly a *reference to Section VII (B)* and the licenses there described, the economic choice between per-program and blanket licenses, and the fees therefor, and again no other type license is mentioned.

Petitioners urge that the type of license they seek would give greater effect to provisions of the Amended Judgment, which, they argue, is rendered ineffectual by the present type of broadcasting licenses. If this be so (and we make no finding either way), relief could only be

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had by a reappraisal of the Amended Judgment to determine if a further amendment were warranted; this only, after hearings on a petition filed for such relief by a party to the suit.

Petitioners were not parties to the judgment; they have petitioner only as beneficiaries under it and they may not under cover of the protection from discrimination afforded them under its provisions indirectly effect an amendment to that judgment so as to wrest from ASCAP a type of license it is now under no judicial compulsion to grant. Here we do not have a petition for modification of the consent judgment filed by a party to the judgment.

The petition will be entertained if petitioners so elect to proceed within ten (10) days from the date hereof, as one filed for fixation of reasonable fees on a renewal of the type of license that is now and for many years past has been held by them.

Dated New York, September 14th, 1962.

s/ Sylvester J. Ryan
U. S. D. J.

A True Copy
Herbert A. Charlson, Clerk

By Elsie M. Eifer
Deputy Clerk

Amended Final Judgment. United States v. ASCAP. Entered March 14, 1950

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, et al., *Defendants*.	Civil Action No. 13—95 AMENDED FINAL JUDGMENT

Plaintiff having filed its complaint herein on February 26, 1941, the defendants having appeared and filed their answer to the complaint denying the substantive allegations thereof, all parties having consented, without trial or adjudication of any issue of fact or law therein, to the entry of a Civil Decree and Judgment, filed March 4, 1941, and jurisdiction having been retained in this Court pursuant to Section XI of said Civil Decree and Judgment for the purpose of granting such modifications of the Civil Decree and Judgment as may be necessary and appropriate; and

Plaintiff having moved the Court that said Civil Decree and Judgment should be modified in certain respects, and all parties hereto consenting to such modifications and the entry of this Amended Final Judgment,

Amended Final Judgment, United States v. ASCAP, Entered March 14, 1950

NOW, THEREFORE, no testimony having been taken and without trial or adjudication of any issue of fact or law herein and without admission by any defendant in respect of any such issue and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED that the Civil Decree and Judgment of March 4, 1941 be amended to read as follows:

I. This Court had jurisdiction of the subject matter hereof and of all parties hereto with full power to enter this Judgment. The complaint states a cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, as amended.

II. As used in this Judgment:

(A) "ASCAP" means the defendant American Society of Composers, Authors and Publishers;

(B) "Right of public performance" means the right to perform a copyrighted musical composition publicly for profit in a non-dramatic manner, sometimes referred to as "small performing right";

(C) "Motion picture performance right" means the right of public performance of music which is recorded in order to be performed in synchronism or timed relation to the exhibition of motion pictures;

Amended Final Judgment, United States v. ASCAP, Entered March 14, 1950

(D) "ASCAP repertory" means those compositions the right of public performance of which ASCAP has or hereafter shall have the right to license or sublicense;

(E) "User" means any person, firm or corporation who or which (1) owns or operates an establishment or enterprise where copyrighted musical compositions are performed publicly for profit, or (2) is otherwise directly engaged in giving public performance of copyrighted musical compositions for profit, or (3) is entitled to obtain a license from ASCAP under Section V of this Judgment.

III. The provisions of this Judgment applicable to the defendant ASCAP shall apply to such defendant, its successors and assigns, and to each of their officers, directors, agents, employees, and to all other persons, including members, acting or claiming to act under, through or for such defendant. None of the injunctions or requirements herein imposed upon the defendants shall apply to the acquisition of or licensing of the right to perform musical compositions publicly for profit outside the United States of America, its territories or possessions, such acquisition or licensing being subject to the provisions of the Final Judgment entered this day in Civil Action No. 42-245.

IV. Defendant ASCAP is hereby enjoined and restrained from:

(A) Holding, acquiring, licensing, enforcing, or negotiating concerning any rights in copyrighted musical com-

positions other than rights of public performance on a non-exclusive basis;

(B) Limiting, restricting, or interfering with the right of any member to issue to a user non-exclusive licenses for rights of public performance;

(C) Entering into, recognizing, enforcing or claiming any rights under any license for rights of public performance which discriminates in license fees or other terms and conditions between licensees similarly situated;

(D) Hereafter granting any license for rights of public performance in excess of five years' duration, except for motion picture performance rights which are licensed pursuant to Section V (C) of this Judgment;

(E) Granting to, enforcing against, collecting any monies from, or negotiating with any motion picture theatre exhibitor concerning any motion picture performance rights;

(F) Instituting or threatening to institute, or maintaining or continuing any suit or proceeding (1) against any motion picture theatre exhibitor for copyright infringement relating to motion picture performance rights or (2) against any user for copyright infringement of any musical composition not contained in the ASCAP repertory. After the preparation of the list required to be maintained by Section XIV herein, the repertory shall be deemed to consist of only those compositions appearing on such list;

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"(G) Restricting the right of any member to withdraw from membership in ASCAP at the end of any fiscal year upon (1) giving three months' advance written notice to ASCAP, and (2) agreeing that his resignation shall be subject to any rights or obligations existing between ASCAP and its licensees under then existing licenses and to the rights of the withdrawing member accruing under such licenses;

(H) Asserting or exercising any right or power to restrict from public performance for profit by any licensee of ASCAP any composition in order to exact additional consideration for the performance thereof, or for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition. Nothing in this Subsection shall be construed to prevent ASCAP, when so directed by the member in interest in respect of a musical composition, from restricting performances of a composition in order reasonably to protect the composition against indiscriminate performances; or the value of the public performance for profit rights therein, or the dramatic performing rights therein, or to prevent ASCAP from restricting performances of a composition so far as may be reasonably necessary in connection with any claim or litigation involving the performing rights in any such composition.

V. Defendant ASCAP is hereby ordered and directed to issue, upon request, licenses for rights of public per-

formance of compositions in the ASCAP repertory, as follows:

(A) To a radio broadcasting network, telecasting network or wired music service (as illustrated by the organization known as "Muzak"), on terms which authorize the simultaneous and so-called "delayed" performance by broadcasting or telecasting or simultaneous performances by wired music service, as the case may be, of the ASCAP repertory by any, some or all of the stations in the United States affiliated with such radio network or television network or by all subscriber outlets in the United States affiliated with any wired music service and do not require a separate license for each station or subscriber for such performances;

(B) To a manufacturer, producer or distributor of a transcription or recordation of a composition in ASCAP's repertory which is or shall be recorded for performance on specified commercially sponsored radio programs or television programs, as the case may be, on an electrical transcription or on other specially prepared recordation intended for radio broadcasting or for television broadcasting purposes (or to any advertiser or advertising agency on whose behalf such transcription or recordation shall have been made) of the right to authorize the broadcasting, by radio or by television, as the case may be, of the recorded composition by means of such transcription or recordation by all radio stations or television stations in the United States enumerated by the licensee, without requiring sepa-

rate licenses for such enumerated stations for such performance;

(C) To any person engaged in producing motion pictures (hereinafter referred to as a "motion picture producer"), so long as ASCAP shall not have divested itself of such rights, a usable license of motion picture performance rights covering the United States, its territories and possessions, without requiring further licenses. Such single license shall be issued in accordance with the following requirements and in accordance with all other provisions of this Judgment not inconsistent therewith:

(1) Such license shall be limited to pictures produced or in production not later than one year after the effective date of the license, and shall not make any charge for any performance occurring prior to the date of this Judgment;

(2) Upon written request of any motion picture producer such license shall be issued on a "per film" basis for the compositions in such film which are in the ASCAP repertory;

(3) All licenses of motion picture performance rights under this Subsection (C) shall be negotiated with and issued to individual motion picture producers, and not on an "industry-wide" basis;

(4) Where within a period of nineteen (19) months prior to the entry of this Judgment a motion picture producer has obtained a license for motion picture performance rights directly from members of ASCAP and has paid

a separately stated amount therefor, such licenses issued by ASCAP covering motion picture performance rights shall, at the request of such producer, include the rights conveyed by the previous license, in which event ASCAP shall allow the motion picture producer a credit against the amount otherwise payable, equal to the amount paid under the previous license;

(5) No writer or publisher member of the Board of Directors of ASCAP shall participate in or vote on any question relating to the negotiation, execution, performance or enforcement of any such license where such member at the time, directly or indirectly, has any pecuniary interest in any motion picture producer, in any subsidiary or affiliate of any motion picture producer, or in any contractual relationship with any such producer.

VI. Defendant ASCAP is hereby ordered and directed to grant to any user making written application therefor a non-exclusive license to perform all of the compositions in the ASCAP repertory. Defendant ASCAP shall not grant to any user a license to perform one or more specified compositions in the ASCAP repertory, unless both the user and member or members in interest shall have requested ASCAP in writing so to do, or unless ASCAP, at the written request of the prospective user shall have sent a written notice of the prospective user's request for a license to each such member at his last known address, and such member shall have failed to reply within thirty (30) days thereafter.

Amended Final Judgment, United States v. ASCAP, Entered March 14, 1950

VII. Defendant ASCAP, in licensing rights for public performance for radio broadcasting and telecasting, is hereby:

(A) Enjoined and restrained from issuing any license, the fee for which

(1) in the case of commercial programs, is based upon a percentage of the income received by the licensee from programs which include no compositions in the ASCAP repertory, or

(2) in the case of sustaining programs, does not vary in proportion either (a) to the performance of composition in the ASCAP repertory during the term of the license, or (b) to the number of programs on which such compositions or any of them are performed,

unless the radio broadcaster or telecaster to whom such license shall be issued shall desire a license on either or both of such bases;

(B) Ordered and directed to issue to any unlicensed radio or television broadcaster, upon written request, per program licenses, the fee for which

(1) in the case of commercial programs, is, at the option of ASCAP, either (a) expressed in terms of dollars, requiring the payment of a specified amount for each program in which compositions in the ASCAP repertory shall be performed, or (b) based upon the payment of a percentage of the sum paid by the sponsor of such program for the use of the broadcasting or telecasting facilities of such radio or television broadcaster,

(2) in the case of sustaining programs, is at the option of ASCAP, either (a) expressed in terms of dollars, requiring the payment of a specified amount for each program in which compositions in the ASCAP repertory shall be performed, or (b) based upon the payment of a percentage of the card rate which would have been applicable for the use of its broadcasting facilities in connection with such program if it had been commercial, and

(3) subject to the other provisions of Section VIII, takes into consideration the economic requirements and situation of those stations having relatively few commercial announcements and a relatively greater percentage of sustaining programs, with the objective that such stations shall have a genuine economic choice between per program and blanket licenses;

(C) Enjoined and restrained from requiring or influencing the prospective licensee to negotiate for a blanket license prior to negotiating for a per program license.

VIII. Defendant ASCAP, in fixing its fees for the licensing of compositions in the ASCAP repertory, is hereby ordered and directed to use its best efforts to avoid any discrimination among the respective fees fixed for the various types of licenses which would deprive the licensees or prospective licensees of a genuine choice from among such various types of licenses.

IX. (A) Defendant ASCAP shall, upon receipt of a written application for a license for the right of public performance of any, some or all of the compositions in the

ASCAP repertory, advise the applicant in writing of the fee which it deems reasonable for the license requested. If the parties are unable to agree upon a reasonable fee within sixty (60) days from the date when such application is received by ASCAP, the applicant therefor may forthwith apply to this Court for the determination of a reasonable fee and ASCAP shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be on ASCAP to establish the reasonableness of the fee requested by it. Pending the completion of any such negotiations or proceedings, the applicant shall have the right to use any, some or all of the compositions in the ASCAP repertory to which its application pertains, without payment of any fee or other compensation, but subject to the provisions of Subsection (B) hereof, and to the final order of judgment entered by this Court in such proceeding;

(B) When an applicant has the right to perform any compositions in the ASCAP repertory pending the completion of any negotiations or proceedings provided for in Subsection (A) hereof, either the applicant or ASCAP may apply to this Court to fix an interim fee pending final determination of what constitutes a reasonable fee. If the Court fixes such interim fee, ASCAP shall then issue and the applicant shall accept a license providing for the payment of a fee at such interim rate from the date of the filing of such application for an interim fee. If the applicant fails to accept such license or fails to pay the interim fee in accordance therewith, such failure shall be ground

for the dismissal of his application. Where an interim license has been issued pursuant to this Subsection (B), the reasonable fee finally determined by this Court shall be retroactive to the date the applicant acquired the right to use any, some or all of the compositions in the ASCAP repertory pursuant to the provisions of this Section IX;

(C) When a reasonable fee has been finally determined by this Court, defendant ASCAP shall be required to offer a license at a comparable fee to all other applicants similarly situated who shall thereafter request a license of ASCAP, but any license agreement which has been executed without any Court intervention between ASCAP and another user similarly situated prior to such determination by the Court shall not be deemed to be in any way affected or altered by such determination for the term of such license agreement;

(D) Nothing in this Section IX shall prevent any applicant or licensee from attacking in the aforesaid proceedings or in any other controversy the validity of the copyright of any of the compositions in the ASCAP repertory nor shall this Judgment be construed as importing any validity or value to any of said copyrights.

X. No officer or director of ASCAP, or any person acting on its behalf, shall participate in or vote on any question relating to any transaction or negotiation involving ASCAP and a licensee, or prospective licensee, where such officer, director, or other person has any pecuniary interest in such licensee or prospective licensee, or in any subsidi-

any or affiliate thereof, or in any contractual relationship with any such licensee or prospective licensee.

XI. Defendant ASCAP is hereby ordered and directed to distribute to its members the monies received by licensing rights of public performance on a basis which gives primary consideration to the performance of the compositions of the members as indicated by objective surveys of performances (excluding those licensed by the member directly) periodically made by or for ASCAP.

XII. Defendant ASCAP is hereby ordered and directed, within three months after the entry of this Judgment, to provide in its Articles of Association, effective as of the date of this Judgment, that ASCAP's members be prohibited from:

(A) At any time, while a member of ASCAP or thereafter, instituting, or threatening to institute, or maintaining or continuing any suit or proceeding for acts of copyright infringement relating to motion picture performance rights (1) alleged to have occurred prior to the date of this Judgment, or (2) where corresponding synchronization rights have been granted prior to the date of this Judgment;

(B) While a member of ASCAP, granting a synchronization or recording right for any musical composition to any motion picture producer unless the member or members in interest or ASCAP grants corresponding motion picture performance rights in conformity with the provisions of this Judgment.

Amended Final Judgment, United States v. ASCAP, Entered March 14, 1950

XIII. In order to insure a democratic administration of the affairs of defendant ASCAP, and to assure its members an opportunity to protect their rights through fair and impartial hearings based on adequate information, defendant ASCAP is hereby ordered and directed to provide in its Articles of Association:

(A) That the members of the Board of Directors shall be elected by a membership vote in which all author, composer and publisher members shall have the right to vote for their respective representatives to serve on the Board of Directors. Due weight may be given to the classification of the member within ASCAP in determining the number of votes each member may cast for the election of directors. Elections for the entire membership of the Board of Directors shall take place annually or every two years. The Board of Directors shall, as far as practicable, give representation to writer members and publisher members with different participations in ASCAP's revenue distributions;

(B) That the general basis of member classification for voting and revenue distribution purposes shall be set forth in writing and shall be made available to any member upon request;

(C) That any member may appeal from the final determination of his classification by any ASCAP committee or board to an impartial arbiter or panel;

(D) That records be maintained by the officers, committees, or boards of ASCAP, and the impartial arbiters or panels referred to in Subsection (C) of this Section dealing with the classification of members and distribution of reve-

tive, which will adequately apprise the respective members of the determinations made and actions taken by such officers, committees and boards of ASCAP, and arbiters or panels as to such members and the basis therefor.

XIV. Immediately following entry of this Judgment, defendant ASCAP shall upon written request from any prospective user inform such user whether any compositions specified in such request are in the ASCAP repertory, and make available for public inspection such information as to the ASCAP repertory as it has. Defendant ASCAP is furthermore ordered and directed to prepare, within two years, and to maintain and keep current and make available for inspection during regular office hours, a list of all musical compositions in the ASCAP repertory, which list will show the title, date of copyright and the author, composer and current publisher of each composition.

XV. Defendant ASCAP is hereby ordered and directed to admit to membership, not participations or otherwise,

(A) Any composer or author of a copyrighted musical composition who shall have had at least one work of his composition or writing regularly published;

(B) Any person, firm, corporation or partnership actively engaged in the music publishing business, whose musical publications have been issued or distributed on a commercial scale for at least one year, and who assumes the financial risk involved in the normal publication of musical works.

Amended Final Judgment, United States v. ASCAP, Entered March 14, 1950

XVI. For the purpose of securing compliance with this Amended Final Judgment, duly authorized representatives of the Department of Justice shall upon the written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to defendant, be permitted (a) reasonable access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant, relating to any of the matters contained in this Amended Final Judgment; (b) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters; and said defendant, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this Judgment, provided, however, that information received by the means permitted in this Section XVI shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

XVII. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Amended Final Judgment to make application to the Court for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out

of this Judgment, for the modification thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

It is expressly understood, in addition to the foregoing, that the plaintiff may, upon reasonable notice, at any time after five (5) years from the date of entry of this Amended Final Judgment apply to this Court for the vacation of said Judgment, or its modification in any respect, including the dissolution of ASCAP (and any time within two (2) years from said date apply to this Court for the vacation or modification of Section V (C) hereof). During the applicable periods specified above, defendant ASCAP is hereby ordered and directed to conduct its affairs, including the making of agreements to acquire or license the rights of public performance, so as not unreasonably to complicate or delay the enforcement of any such further relief requested by plaintiff and granted by this Court pursuant to the terms of this Section.

XVIII. This Amended Final Judgment shall become effective from the date of entry hereof, except that the provisions of Sections IV (G), XIII and XV shall become effective three months after the date of entry hereof, and the provisions of Section XI shall become effective eight months after the date of entry hereof. This Amended Final Judgment supersedes the Civil Decree and Judgment entered herein on March 4, 1941, but shall not be construed to make proper or lawful or sanction any acts which occurred prior to the date hereof which were enjoined, restrained or prohibited by said Civil Decree and Judgment of March 4, 1941.

Amended Final Judgment, United States v. ASCAP. Entered March 14, 1950

Approved:

March 14, 1950

HENRY W. GODDARD
United States District Judge

We hereby consent to the entry of the foregoing Judgment.

For the plaintiff

SIGMUND TIMBERG
Special Assistant to the
Attorney General
WILLIAM D. KILGORE, JR.
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For the Defendants

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HERMAN FINKELSTEIN
OSCAR COX
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By LOUIS D. FROHLICH

Judgment entered:

WILLIAM V. CONNELL
Clerk

March 14, 1950

Petition of Shenandoah Valley Broadcasting, Inc., et al., Dated December 18, 1961

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of Shenandoah Valley Broadcasting, Inc., et al., respectfully alleges:

1. Each of the petitioners listed in Exhibit A attached hereto is a corporation engaged in operating a television broadcasting station or stations known by the call letters, and situated in the areas, indicated opposite its name in Exhibit A.

2. The amended final judgment in *United States* v. *American Society of Composers, Authors and Publishers*, Civil Action No. 13-95, provides in paragraph IX(A) thereof that:

> "Defendant ASCAP shall, upon receipt of a written application for a license for the right of public performance of any, some or all of the compositions in the ASCAP repertory, advise the applicant in writing of the fee which it deems reasonable for the license requested. If the parties are unable to agree upon a reasonable fee within sixty (60) days from the date when such application is received by ASCAP, the applicant therefor may forthwith apply to this Court for the determination of a reasonable fee . . . Pending the completion of any such negotiations or proceedings, the applicant shall have the

* Omitted from this Appendix

right to use any, some or all of the compositions in the ASCAP repertory to which its application pertains, without payment of any fee or other compensation, but subject to the provisions of Subsection (B) hereof, and to the final order or judgment entered by this Court in such proceeding."

3. Paragraph IX(B) of the amended final judgment further provides in part that:

"... either the applicant or ASCAP may apply to this Court to fix an interim fee pending final determination of what constitutes a reasonable fee. If the Court fixes such interim fee, ASCAP shall then issue and the applicant shall accept a license providing for the payment of a fee at such interim rate from the date of the filing of such application for interim fee. ..."

4. On or about October 18, 1961, petitioners made written application to ASCAP for blanket and per program licenses giving each petitioner, beginning on January 1, 1962, and continuing through December 31, 1966, the right to use any, some, or all of the compositions in the ASCAP repertory in all of petitioners' public television broadcasts, excepting only:

(a) network programs; and

(b) programs consisting of pre-recorded (filmed or taped) material which is produced hereafter by persons other than petitioner (e.g., theatrical motion picture films

of syndicated TV film episodes), for which the producer normally acquires recording rights at the time the film is produced.

In order to give producers of new filmed or taped material a reasonable opportunity to clear performance rights at the source, and to avoid any prejudice to producers who have partly completed programs without clearing performance rights, petitioners, by letter of November 29, 1961, advised ASCAP that the pre-recorded programs to be excluded from the license would be limited to material produced after February 28, 1962.

5. Petitioners and ASCAP have been unable to agree upon a reasonable fee for the licenses requested herein within sixty (60) days of petitioners' application. A copy of petitioners' application of October 18, 1961, to ASCAP, as further defined by letter of November 29, 1961, is attached hereto as exhibit B.* In order to simplify the issues, the petitioners, for purposes only of fixing an *interim* fee to be paid for the rights requested, are willing to accept a license with the limitations cited in Paragraphs 4(a) and (b) above, but otherwise adhering to the forms of license now in effect between them and ASCAP without the clarifications and amendments of such forms of license contained in Schedule A and B to their application of October 18, 1961. This request is made without prejudice to petition-

* Omitted from this Appendix.

ers' rights, upon the final determination of the reasonable fee to be paid, to obtain such clarifications and amendments.

WHEREFORE, petitioners respectfully apply to this Court at the foot of the ASCAP final judgment, on behalf of themselves and all others similarly situated who may join this application and contribute to the expenses thereof, for an order

(a) determining the reasonable and non-discriminatory fees to be paid for the blanket and per program licenses requested herein;

(b) fixing the interim fee to be paid by petitioners for the rights requested in ASCAP's existing repertory at 75% of the rate payable under licenses expiring on December 31, 1961, and in the case of the blanket license sustaining fee, an amount per sustaining program no greater than the station would pay on a commercial program broadcast during the same time period, subject to a monthly maximum equal to 75% of the station's highest quarter-hour card rate, the said rate to be decreased in proportion to any decrease of more than 10% in the existing repertory (as measured by the total amount of ASCAP's distribution of royalties during the preceding calendar year), without prejudice to petitioners' rights, upon a proper showing, to an order establishing reasonable and non-discriminatory fees at lower or different levels;

(c) directing ASCAP to execute and issue to each petitioner an interim license granting the rights requested,

providing for a payment of a fee at the interim rate fixed by this Court from January 1, 1962, until the date when a final order establishing a reasonable fee is entered, and upon acceptance of such license by petitioners, or any of them, to submit a true copy to each of ASCAP's composer and publisher members, advising that the license has been executed pursuant to this order;

(d) in order to prevent frustration or circumvention of Paragraph IX of the amended final judgment herein, and the foregoing orders thereunder,

(i) setting aside the resolution contained in ASCAP's letter of August 4, 1961, to its members to the effect that authorizations received by ASCAP from its members to license television performing rights owned and controlled by members will be held in escrow by the President of ASCAP;

(ii) enjoining ASCAP and its Board of Directors from refusing to exercise the authorizations received by ASCAP from its members to issue television performance licenses;

(iii) enjoining ASCAP, its Board of Directors and any member who has executed and delivered such authorization to ASCAP from threatening or instituting any proceedings against petitioners for copyright infringement by reason of the public performance by petitioners on television of any compositions covered by such authorization;

(iv) directing ASCAP forthwith to furnish to petitioners a list of the composer and publisher members who have authorized ASCAP, conditionally or otherwise, to issue television performance licenses for the period beginning January 1, 1962, and showing the percentage of ASCAP's existing repertory (as measured by the total amount of ASCAP's distribution of royalties during the preceding calendar year) represented by such authorizations; and

(v) enjoining ASCAP, its Board of Directors, and its members from enforcing or adhering to any condition devised, created, or imposed by ASCAP or its Board of Directors which discourages or prevents composer or publisher members from authorizing ASCAP to license to petitioners the rights requested herein, and further enjoining ASCAP, its Board of Directors and its members from in any way discouraging or preventing composer or publisher members from authorizing ASCAP on their behalf to license to petitioners the rights requested herein; and

(vi) enjoining ASCAP, its Board of Directors and members from withdrawing, or purporting to withdraw any television performance rights presently contained in the ASCAP repertory and limiting, restricting, or interfering with the television performance by petitioners of any, some, or all of the compositions presently in the ASCAP repertory;

(e) fixing the time for service and filing of ASCAP's answer to this petition and for service and filing of affidavits in reply thereto by petitioners; and

(f) granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
December 18, 1961.

DONOVAN LEISURE NEWTON & IRVINE
Attorneys for Petitioners
No. 2 Wall Street
New York 5, N. Y.

Order of the United States District Court for the Southern District of New York, Filed October 10, 1962

Petitioners Shenandoah Valley Broadcasting, Inc., et al., constituting all of the local television stations which are petitioners herein other than network owned and operated stations (hereinafter collectively referred to as "Shenandoah Valley Broadcasting, Inc., et al.") having applied to this Court on December 19, 1961 for an order under the Final Amended Judgment herein determining fees to be paid to respondent American Society of Composers, Authors and Publishers for the type of licenses requested by said petitioners, and

Respondent having filed its answer denying that the Court is authorized by the Amended Final Judgment to determine fees for the type of licenses requested by said petitioners, and

Petitioners Columbia Broadcasting System, Inc., National Broadcasting Company, Inc., and American Broadcasting-Paramount Theatres, Inc., and WXYZ, Inc., having filed applications for the determination of reasonable license fees for their television networks and the television stations owned and operated by such petitioners, and

By its order of March 5, 1962, this Court having consolidated all of the foregoing applications, and

The Court having ordered the respondent to issue interim licenses to all of the petitioners upon the same terms

Order of the United States District Court for the Southern District of New York, Filed October 10, 1962

as are set forth in the agreements in effect between the respective petitioners and respondent prior to January 1, 1962, and

The Court having heard argument as to the authority of the Court under the Amended Final Judgment to determine fees for the type of licenses requested by petitioners Shenandoah Valley Broadcasting, Inc., et al., and having permitted said petitioners and respondent to submit respective proposed offers of proof, which offers of proof were submitted to the Court on April 17, 1962, and

The Court having reached a decision without having considered the offers of proof submitted by the parties and without making any findings of fact with respect thereto, and

The Court having filed its opinion on September 14, 1962, finding that it is not authorized under the Amended Final Judgment to determine fees for the type of licenses for which petitioners Shenandoah Valley Broadcasting, Inc., et al., have applied, and

The Court having given petitioners Shenandoah Valley Broadcasting, Inc., et al., ten (10) days thereafter to elect to have their petition treated as filed for the determination of fees on the types of licenses heretofore in effect between petitioners and ASCAP, and no such election having been made by petitioners, and

Order of the United States District Court for the Southern District of New York, Filed October 10, 1962

Petitioners Shenandoah Valley Broadcasting, Inc., et al., having moved the Court for an order vacating as to them the March 5, 1962 order of consolidation, and severing the application of said petitioners from the remaining consolidated applications, and the Court having heard argument thereon; it is

ORDERED that the application of petitioners Shenandoah Valley Broadcasting, Inc., et al., be and hereby is severed from the consolidated applications and that it be treated henceforth as a separate proceeding under the following caption:

UNITED STATES OF AMERICA,

Plaintiff,

against

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,

Defendant-Respondent.

Order of the United States District Court for the Southern District of New York, Filed October 10, 1962

In the Matter of the Application

of

SHENANDOAH VALLEY BROADCASTING, INC. et al.,

Petitioners,

For the Determination of Reasonable License Fees.

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and it is

FURTHER ORDERED that there being no just reason for delay, the Clerk of the Court is directed to enter final judgment dismissing the application of petitioners Shenandoah Valley Broadcasting, Inc., et al.

SYLVESTER J. RYAN
U. S. D. J.

Dated: New York, N. Y.
October 10th, 1962

Judgment of the United States District Court for the Southern District of New York, Filed October 10, 1962

The Honorable Sylvester J. Ryan, in an order dated and filed October 10, 1962, having severed the application of Shenandoah Valley Broadcasting, Inc. to be treated under the above caption; determined there being no just reason for delay and directed entry of final judgment dismissing the application of petitioners Shenandoah Valley Broadcasting, Inc., et al.; it is

ADJUDGED: The respondent American Society of Composers, Authors and Publishers have judgment against the petitioners Shenandoah Valley Broadcasting, Inc., et al. dismissing their application.

Dated: New York, N. Y.
October 10, 1962.

HERBERT A. CHARLSON,
Clerk.

Petitioners' Offer of Proof, Filed April 17, 1962

Petitioners make the following offer of proof on the issue of petitioners' right under the Amended Final Judgment herein to obtain the local station television performance licenses for which petitioners have applied to the American Society of Composers, Authors and Publishers (hereinafter called "ASCAP") and to this Court. This offer is made without prejudice to petitioners' right, upon a hearing in this proceeding, to offer additional proof in support of petitioners' application or in rebuttal to evidence offered in opposition thereto.

I.

OFFER OF PROOF OF BACKGROUND FACTS RELATING TO PETITIONERS' PROPOSED LICENSES.

1. As of April 17, 1962 the petitioners herein represented 359 commercial television stations, operating under a license or construction permit from the Federal Communications Commission. Petitioners represent over 65% of the commercial television stations in operation in the United States as of January 1, 1962.

2. ASCAP is an unincorporated membership association of composers, authors and publishers organized and existing under the laws of the State of New York, having its principal office and place for doing business at 575 Madison Avenue, New York City. ASCAP was organized in 1914 by publishers, composers and authors of copy-

righted musical compositions for a period of 99 years from the date of its organization. Since its organization, ASCAP has been engaged in the business of issuing licenses for the right to perform publicly for profit copyrighted musical compositions in ASCAP's repertory.

3. ASCAP's present membership includes several thousand composers, authors and publishers who collectively own or control many hundreds of thousands of copyrighted musical works. ASCAP's members, and others including foreign performing rights societies, have authorized ASCAP to issue licenses for the right to perform these works publicly for profit. Such works appear widely on phonograph records, on sheet music and in theatrical motion picture and television films. In order for petitioners to operate their stations profitably and successfully it is essential that petitioners have the right to perform compositions in the ASCAP repertory on programs produced by petitioners locally and on filmed or taped program material furnished to petitioners by others.

4. In 1961 ASCAP earned approximately $33,000,000 from all sources of revenue, of which about $19,000,000 was paid by television broadcasters and networks. Subject to certain deductions for distributions to foreign performing rights societies, administrative costs and expenses and contingencies, ASCAP distributes to its members all revenues derived by ASCAP through its performance licenses, one-half of such distributive share going to author and

composer members and the other half to publisher members.

5. Local television broadcasters have three principal sources for television program material:

(a) Programs furnished to local stations by the three national television networks;

(b) Programs produced locally by or on behalf of a broadcaster, which are either "live" (i.e., transmitted directly from the television camera to the viewer) or recorded locally on motion picture film or video tape; and

(c) Pre-recorded program material sold or licensed to broadcasters by independent producers or distributors, which consists for the most part of motion picture films produced initially for theatre exhibition, of television film series* and of other films or video tapes produced primarily

* A "television film series" consists of a group of separate self-contained films, commonly known as "episodes," produced for initial television presentation on a television network or local station. The episodes of a series are each of approximately the same length and either involve a continuity of theme, situation or principal characters or are comprised of unrelated dramatic presentations commonly known as "anthologies." A film series commonly consists of 13, 26, 39 or more episodes, and in some instances may exceed a hundred separate episodes. In many instances a series is produced for presentation as a half-hour television program, and in some instances for presentation as a five, ten or fifteen minute program or as a one hour program. Some television film series have been produced by the television networks. The large majority have been, and are, produced by independent organizations which sell or lease their films to the television networks and local stations.

for television showing. In addition, broadcasters receive some filmed material from agencies of federal, state, and local governments, educational institutions and groups, charitable organizations and other sources.

6. Filmed material produced by others than the broadcaster constitutes a substantial portion of local (non-network) television programming.

As determined by a recent industry-wide survey, in 1961 television stations with network affiliations devoted on the average approximately 68% of their local (non-network) programs* to filmed and taped programs (only a small amount of which represents programs recorded locally by the broadcaster) as follows:

(a) Films made for initial motion picture theatre exhibition	34%
(b) Television film series and other television films	32%
(c) Syndicated video tape shows	2%
Total percentage of local broadcasting time devoted to the foregoing prerecorded programs	68%

* In 1961 television stations with network affiliations devoted on the average approximately 62% of their total broadcasting time to network programs and 38% to local (non-network) programs.

Petitioners' Offer of Proof, Filed April 17, 1962

Television stations without network affiliation devoted in 1961 approximately 71% of their total broadcasting time to filmed and taped programs, as follows:

(a) Films made for initial motion picture theatre exhibition	27%
(b) Television film series and other television films	39%
(c) Syndicated video tape shows	5%
Total percentage of local broadcasting time devoted to the foregoing prerecorded programs	71%

7. The use by television stations of prerecorded filmed or taped program material furnished by independent producers and distributors is essential to their profitable operation. Such prerecorded programs contain material which cannot be reproduced by the broadcaster (e.g., outdoor adventure shows, sports programs, nature and wild life programs, travel programs) and in many instances present entertainers who would not otherwise be available. In most instances it would not be physically or financially possible for local television stations to attempt to duplicate such prerecorded program material on a "live" basis. It is essential for broadcasters to have the right to perform works in the ASCAP repertory in order to exhibit the numerous films containing one or more of such works.

Petitioners' Offer of Proof, Filed April 17, 1962

8. The scope of the licenses which petitioners seek in the within proceeding differs from the scope of ASCAP's existing local station licenses in that petitioners' proposed licenses would:

(a) Exclude prerecorded program material sold, licensed, or otherwise furnished to broadcasters by independent producers or distributors and whose production is commenced after February 28, 1962, or such other date as may be fixed by the Court for the commencement of petitioners' licenses;

(b) Include "cooperative programs" (as defined in paragraph 5(F) of the existing local station blanket licenses and 4(F) of the existing local station per program licenses), which are excluded from the coverage of ASCAP's existing local station licenses.

9. The scope of the licenses which petitioners here seek would remain the same as ASCAP's existing local station licenses in the following respects:

(a) They would exclude programs furnished to local stations by a television network.

(b) They would include programs produced locally by or on behalf of a broadcaster to the extent that such programs are covered by ASCAP's existing local station licenses. Petitioners include such programs within the scope of their proposed licenses because it would be commercially impossible for broadcasters to negotiate sepa-

rately with each member of ASCAP for music performance rights.

(c) They would include prerecorded program material sold, licensed or otherwise furnished to broadcasters by independent producers or distributors, which are produced, or whose production is commenced, prior to February 28, 1962, or such other date as may be fixed by the Court, to the same extent that such programs are covered by ASCAP's existing local station licenses. Petitioners include such existing prerecorded program material because, for the reasons stated hereinafter, the producers and distributors thereof have not heretofore acquired television performance rights with respect to ASCAP music incorporated therein, and in many cases it would be difficult or impossible for such a producer or distributor now to bargain for and obtain the necessary television performance rights.

10. When the terms of the existing local station licenses were originally negotiated in and prior to 1953, the production of television films was conducted on a relatively minor scale, and post-1948 theatrical motion picture films were not generally available for exhibition by television broadcasters. At the present time, television film series constitute a large portion of the prerecorded material exhibited by broadcasters, and since 1960, following an agreement between the domestic motion picture industry and various talent guilds for the general release to television of post-1948 theatrical motion pictures, current theatrical motion

pictures have become available to broadcasters in increasing numbers.

II.

OFFER OF FACTS TO PROVE THAT PETITIONERS' PROPOSED LICENSES CONFORM TO THE NORMAL AND CUSTOMARY WAY OF LICENSING MUSIC RIGHTS.

1. Producers of theatrical motion pictures, television film series and other television films commonly obtain music for use in such films either by engaging a composer to produce an original score, or by obtaining a license from a music publishing firm for the right to use an existing copyrighted musical work, or by obtaining recordings from the various companies, commonly known as sound track libraries, which maintain selections of pre-recorded music for use as background and incidental music in films. The common practice in the production of theatrical motion picture films and television films series is for the producer to engage a composer to create an original musical score and to incorporate into that score brief selections drawn from existing works owned by music publishing firms or furnished by sound track libraries. At present, several hundred composers are engaged in writing such film music, and these writers constitute the major source of music for films currently in production.

2. Excepting only television performance rights, the film producer normally makes all of the necessary arrange-

ments with the respective composers or other copyright owners to enable such film to be performed publicly for profit. The producer obtains a music recording, or synchronization, license (see Exhibits 1 and 3 annexed hereto). Where the films is intended for exhibition in theatrical motion picture houses, the producer obtains the motion picture theatre performance rights (see Exhibits 1 and 3 annexed hereto). Where the film contains "dramatic" music excluded from ASCAP's existing television performance licenses, the producer, when dealing with ASCAP members, also obtains a "dramatic" music license.

3. When dealing with composers or other copyright owners who are not members of any performing rights organization, or who have not licensed or assigned their works to such an organization, the film producer commonly obtains, in addition to the recording and other rights referred to above, the necessary television performance rights.

4. With respect to pre-recorded commercial announcements containing music in the form of "jingles" or background music, the film producer commonly obtains all necessary television performance rights from the composer or copyright owner, and such music commonly is not licensed to TV stations through any performing rights organization.

5. With respect to copyrighted literary material, the common practice is for film producers to make arrange-

ments with the author or other copyright owner for all necessary recording and performance licenses, including the television performance rights. Broadcasters exhibiting the films do not take out any additional or separate license for the right to perform such copyrighted literary material.

III.

OFFER OF FACTS TO PROVE THAT THERE ARE SUBSTANTIAL DIFFERENCES IN THE QUANTITY AND QUALITY OF THE MUSIC USED IN DIFFERENT FILMS, AND THAT THE FAIR AND REASONABLE VALUE OF THIS MUSIC CANNOT BE DETERMINED EXCEPT THROUGH NEGOTIATIONS CONDUCTED AT THE TIME THE MUSIC USED IN THE FILM IS SELECTED BY THE FILM PRODUCER.

1. There exist substantial variations among different theatrical motion pictures and television films with respect to (a) the number of composers whose musical works are, in whole or in part, represented in the film; (b) the number of different selections used, in whole or in part, in the film; (c) the popularity of the musical selections used in the film and the professional reputation of their respective composers; (d) the type of use made of the music in the film, e.g., feature use in the form of vocal or instrumental rendition, use as theme music, and use as background, cue or bridge music; and the amount of film playing time with musical accompaniment; and (e) the types of music used in films, some of such different types being colloquially

known as "classical" music, "semi-classical" music, "popular" music, and other current musical forms such as "country and Western" music, "rhythm and blues" and "rock 'n roll".

2. Only the film producer is in a position to determine his musical needs for each film, which vary substantially both as to the quality and quantity of music required from film to film.

3. The music rights which the film producer normally acquires are far more limited in scope than the rights which television stations must take under ASCAP's existing television performance licenses. When licensing the music recording rights and motion picture theatre performance rights to film producers, music publishers commonly define (a) the type of use that may be made of the music in the film; (b) the amount of use, e.g., the number of separate occasions that the music may be played in the film, the total permitted playing time, etc.; (c) the method of exhibition, e.g., whether the film is to be exhibited in motion picture theatre houses, on television networks and local stations, or on "closed circuit" or "subscription or pay" television; (d) the geographic areas covered by the license; and (e) the term of the license.

4. The prices which film producers pay to composers and other copyright owners for the music recording rights, the right to make "dramatic" use of music, and motion

picture theatre performance rights are commonly arrived at through negotiation between the parties and vary substantially, depending on the relative merits of the different compositions involved, the reputation of their respective composers, the use made of the music in the film, and many other factors.

5. The compensation received by composers engaged by film producers is commonly determined through negotiations between the producer and the composer. While in many instances the existing collective bargaining agreement between the major film producers and members of the Composers and Lyricists Guild (Exhibit 3 annexed hereto) places a floor under the compensation to be paid to composers, composers often seek compensation over and above the prescribed minimum, or seek types of compensation (e.g., a fee based on the number of minutes of music composed) not provided for in the collective bargaining agreement, and their compensation, as finally agreed upon, varies greatly depending upon the reputation of the composer, the amount of music in the film, and many other factors.

6. When negotiating with film producers for the right to use existing compositions, music publishers and their licensing agents commonly require the film producer to furnish detailed information as to the projected use of the composition, including information as to whether the producer plans to give the composition a vocal or instrumental

rendition, whether the work will be used as feature music or as background and incidental music, and the number and maximum length of performances of the music in the film. Upon receiving the requested information concerning the intended use of the music sought, the publisher or his agent commonly quotes a fee to the producer. The producer thereafter may accept or reject the quoted fee, or seek a lower fee. On occasion the producer may solicit quotations from several different publishers and make his selection after receiving their respective bids.

7. Sound track libraries generally make their respective catalogues available at published card rates. The amount of the fee commonly depends upon the number of selections used by the film producer, the number of uses made of particular selections, and whether the producer acquires motion picture theatre performance rights or only the recording rights. While the film producer seldom bargains with the supplier over the price of particular selections, the fees charged are modest and reflect the fact that such libraries are in active competition with each other and with other sources of music.

8. It is commercially impracticable for television broadcasters to negotiate individually with the composers or publishers whose music appears in theatrical motion pictures, television film series and other syndicated television films and tapes for the television performance rights thereto, for the reasons that:

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(a) Broadcasters do not select, or participate in the selection, of the musical compositions appearing in such films, and it is not practicable for them to do so. When a syndicator or distributor furnishes a film to a broadcaster, the musical compositions used in the film have already been selected by the film producer, and have been recorded, synchronized in timed relation with the action shown, and incorporated into the film sound track. The musical accompaniment appears on the same sound track as the dialogue and cannot readily be changed or altered. Film distributors commonly require as a condition to licensing films to a broadcaster that the broadcaster agree to exhibit the film without altering the musical score.

(b) Inasmuch as a broadcaster cannot exhibit a film unless and until the performance rights with respect to all of the copyrighted compositions used in the film have been cleared, the broadcaster could not conclude a separate licensing agreement with any one composer or publisher whose works are used in the film unless all of the other composers or publishers represented in the film likewise agree to issue television performance licenses to the broadcaster.

(c) ASCAP, its members, and their affiliates have entered into various restrictive agreements and arrangements, set out below in Point IV of this offer of proof, intended to channel television performance rights for li-

censing through ASCAP, and to limit, restrict and interfere with the right of ASCAP members separately to issue performance licenses to broadcasters.

IV.

OFFER OF FACTS TO PROVE THAT BROADCASTERS HAVE NOT, AND CANNOT, OBTAIN THE BENEFITS OF COMPETITION IN THE LICENSING OF FILMED MUSIC UNDER ASCAP'S EXISTING LICENSES AND THAT TO CONSTRUE THE AMENDED FINAL JUDGMENT HEREIN SO AS TO DENY PETITIONERS' PROPOSED LICENSES WOULD BE TO DEFEAT THE PURPOSES OF THAT JUDGMENT AND TO PRESERVE UNLAWFUL RESTRICTIONS IMPOSED BY ASCAP AND ITS MEMBERS CONTRARY TO THE TERMS OF THE JUDGMENT.

1. Prior to 1941 ASCAP required its composer and publisher members to assign to ASCAP the exclusive right to issue performance licenses, and prohibited its members from issuing performance licenses individually. Since ASCAP controlled all or nearly all of the copyrighted music in the United States before 1941, it was impossible for theatrical motion picture exhibitors, radio stations, and other persons regularly performing music for profit to operate successfully without obtaining a performance license from ASCAP.

2. In 1941 a final judgment was entered, by consent, in the action of *United States* v. *American Society of Com-*

posers, Authors and Publishers, et al. (U. S. D. C., S. D. N. Y. Civ. No. 13-95), which prohibited ASCAP from acquiring any exclusive performing rights as agent, trustee, or otherwise on behalf of any copyright owner or other owner of the performing rights, but permitted ASCAP to require all moneys derived from the issuance of licenses by its members to be paid by the licensee to ASCAP for distribution in the same manner as ASCAP's other revenues, which had the effect of discouraging members from licensing their compositions individually at the source in competition with ASCAP or its other members.

3. With respect to theatrical motion picture films it became the uniform practice, after the development of films with a synchronized sound track, for the film producer to acquire only the music recording rights and to require the film exhibitor to obtain a performance license through ASCAP. This practice developed by reason of the fact, as noted above, that prior to 1941 ASCAP prohibited its members from issuing performance licenses individually, and after 1941 discouraged individual composers and publishers from licensing producers at the source by requiring all moneys derived through such licenses to be paid over to ASCAP. Furthermore, the practice developed prior to 1941 for film producers and composers to enter into contractual arangements under which the producer acquired only music recording rights from the composer of the music used in the film and agreed with the composer to assign

the performance rights to ASCAP so as to permit both the composer and the producer (through an affiliated music publishing house) to share in ASCAP's receipts from its theatre licenses. These arrangements were supplemented by provisions in contracts between film distributors and film exhibitors prohibiting the exhibitor from changing or deleting any of the music in films furnished to the exhibitor and further providing that such films could be exhibited only in theatres which had a performance license from ASCAP.

By reason of the foregoing, it was, and until 1948 continued to be, the uniform practice for theatrical film producers to acquire only the music recording licenses and for film exhibitors to take out ASCAP performance licenses.

4. In 1948 the United States District Court for the Southern District of New York enjoined ASCAP from collecting performance fees from domestic theatrical motion picture exhibitors (80 F. Supp. 999 (1948)) and in 1950 the Final Judgment herein was amended, by consent, so as to prohibit ASCAP from issuing performance licenses to or collecting fees from domestic motion picture theatre exhibitors concerning any motion picture performance rights.

5. While film producers have since 1948 obtained theatrical motion picture performance rights at the source in addition to the music recording rights, film producers have

not, and do not, acquire the television performance rights for the reason that:

(a) By reason of the foregoing, it had become, and remained, the uniform practice of film producers not to acquire performance rights (except to the extent required, by reason of the 1950 amendment of the Final Judgment herein, to have the films exhibited in domestic theatrical motion picture houses), which practice enables the producers not only to realize revenue from their sale or rental of films but also to share in ASCAP's performance fees;

(b) Under ASCAP's existing local station television performance licenses, broadcasters pay a performance fee with respect to filmed and taped programs exhibited by them (or in the case of the per program license, filmed and taped programs containing ASCAP music) and thereby relieve the producers of such program material of the necessity of clearing television performance rights at the source while ASCAP's existing licenses continue in effect;

(c) ASCAP, its members, and their affiliates have entered into various restrictive agreements and arrangements, set out below, intended to channel television performance rights in film music for licensing through ASCAP, to inhibit film producers from clearing television performance rights at the source, and to limit, restrict, and interfere with the right of ASCAP members separately to issue non-exclusive performance licenses with respect to such film music, in violation of Section IV(B) of the Amended Final Judgment herein.

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6. While ASCAP's existing licenses do not require the licensee to make license payments with respect to music in films where the producer has cleared the television performance rights at the source (see paragraph 5(H) of the existing ASCAP blanket license agreement and paragraph 4(I) of the existing ASCAP per program license), broadcasters have, by reason of the foregoing, been deprived of any benefits from these provisions. There is no instance, to petitioners' knowledge, where the producer of a theatrical motion picture feature film or television film series has cleared such music at the source when dealing with ASCAP members, and at no time have petitioners been relieved of any payments required pursuant to the foregoing provisions of the existing licenses.

Film producer-music publisher affiliations

7. All, or nearly all, major producers of theatrical motion pictures and television films maintain music publishing subsidiaries or affiliates which are members of ASCAP and through which such producers share in the licensing payments made by television stations to ASCAP under their existing licenses. A partial list of film producers and their ASCAP publishing subsidiaries or affiliates is as follows:

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Producer	*ASCAP Music Publishing Subsidiary or Affiliate*
Warner Bros. Pictures, Inc.	Harms, Inc. Atlas Music Corp. M. Witmark & Sons Remick Music Corp. Advance Music Corp. Fullarton Music Corp. New World Music Corp.
Metro-Goldwyn-Mayer, Inc.	Variety Music, Inc. Lion Music Corporation Robbins Music Corporation Leo Feist, Inc. Miller Music, Inc. Pine Ridge Music, Inc.
Twentieth Century-Fox Film Corp.	Surray Music Corp. Movietone Corp. 20th Century Music Corp.
Paramount Pictures, Inc.	Birdees Music Corp. Famous Music Corp. Paramount Music Corp.
Columbia Pictures Corp.	Colpix Music, Inc. Columbia Pictures Music Corp.
Walt Disney Productions, Inc.	Walt Disney Music Co.
United Artists, Inc.	United Artists Music Co., Inc.
Universal-International Films, Inc.	Universal Music Corp.
Desilu Products, Inc.	Desilu Music Corp.
Revue Studios	Alaska Music Co., Inc.
Four-Star Films, Inc.	BNP Music Publishing Co.

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8. When a film producer maintaining such an ASCAP music-publishing affiliate engages a composer to write music for a film, he commonly enters into an agreement with the composer designed to enable both the producer and the composer to share in the payments made by television stations to ASCAP under their existing performance licenses. A representative form of film producer-composer agreement is annexed hereto as Exhibit 1. Under this agreement the composer assigns to the producer all right, title, and interest, and the statutory copyright and all renewals thereof, to the producer (paragraph 6(a) of Exhibit 1), including the right to collect the publisher's share of performance royalties becoming due and payable from any small performing rights organization by reason of performance of the music (paragraph 6(c) of Exhibit 1). Simultaneously the producer licenses back to the composer the non-dramatic (i.e., "small") performing rights in the music so as to enable the composer to license such non-dramatic performing rights to a performing rights organization (paragraph 6(d) of Exhibit 1). The producer, in turn, assigns the publisher's (50%) share of the television performance rights to his ASCAP music publishing affiliate. Then, by registering the composition with ASCAP, the producer and the composer both share, on a 50-50 basis, in the payments made by television stations under the existing ASCAP licenses.

9. When incorporating existing musical compositions into their films, such producers often select works owned

by their ASCAP affiliate in order to collect the publishers' distributive share of the earnings realized by ASCAP through its existing television performing rights licenses. In many instances the music director, composer, or other person in the employ of the film producer who is charged with the duty of selecting appropriate musical compositions for use in films is a member of ASCAP.

10. Such film producers commonly offer films to television stations only on condition that the station agrees to obtain the necessary television performance licenses from ASCAP, and further require that none of the music in the film be changed when the film is broadcast. A representative form of distribution agreement provides that

> "Licensor [distributor] represents that the performing rights in the music contained in the licensed film or films are: (a) controlled by BMI, ASCAP, SESAC, or any other performing rights society having jurisdiction, or (b) in the public domain, or (c) controlled by Licensor to the extent necessary to permit Licensee's [broadcaster's] use of the said film or films hereunder. Licensor agrees to indemnity Licensee against liability, loss, damages, or expenses arising out of the performance of any music in the said film or films, the performing rights to which are in this category (c). Licensor shall furnish Licensee with the music cue sheets of each film licensed hereunder; and *Licensee agrees to abide by and use the same in the same form as so provided without change. Licensee agrees that it will procure and pay for any licenses required to perform such music* and Licensee

further agrees that it will hold Licensor harmless from any liability, loss, damages, or expense arising from Licensee's failure so to do."

The American Guild of Authors and Composers

11. The American Guild of Authors and Composers is a voluntary association organized under the laws of the State of New York. The great majority of its members are also members of ASCAP. All of the officers of the Guild and all of the members of its governing "council" are members of ASCAP, and number among them several of ASCAP's leading officers and directors, including Stanley Adams, president and a director of ASCAP, Otto Harbach, a vice-president and director of ASCAP, Richard Rodgers, a director of ASCAP, and Arthur Schwartz, assistant secretary and a director of ASCAP. Of ASCAP's twenty-four board members, comprising twelve publisher-members and twelve writer-members, four writer-members (as noted above) are Guild Council members, and of the remaining eight, several have from time to time been members of the Guild.

12. The Guild has promulgated, circulated and encouraged the adoption by ASCAP members of a standard composer-music publisher agreement known as the "Uniform Popular Songwriters Contract," a copy of which is annexed hereto as Exhibit 2. ASCAP members have widely entered into such agreement with music publishers.

Petitioners' Offer of Proof, Filed April 17, 1962

13. This standard agreement is designed to inhibit publishers from granting television performance rights directly to film producers or to television broadcasters and to insure that, in lieu thereof, such rights will be licensed to televison broadcasters through ASCAP. Implementing this purpose, the agreement provides (in paragraph 4(k)) that:

> "Except to the extent that the Publisher and Writer have heretofore or may hereafter assign to or vest in the American Society of Composers, Authors and Publishers the said rights or the right to grant licenses therefor, it is agreed that no licenses shall be granted without the written consent, in each instance, of the Writer for the use of the composition by means of television, or by any means or for any purposes not commercialy established, or for which licenses were not granted by the Publisher on musical compositions prior to June 1, 1937."

Film producer-music publisher agreements

14. In order to share in ASCAP's revenues under its television performance licenses, publisher-members of ASCAP (whether or not affilated with a film producer) assign the television performance rights in copyrighted music owned or controlled by them to ASCAP, and when issuing recording licenses to film producers commonly specify that the film may be shown only over stations licensed by ASCAP. A representative form of music publisher-film producer agreement used by ASCAP pub-

lisher-members is annexed hereto as Exhibit 3. Paragraph 6(a) of the agreement provides that

> "Said musical compositions as recorded in said motion picture may be performed within the territory covered by this license over television networks or local stations having appropriate licenses from any performing right society having jurisdiction in the territory in which said musical composition is so performed."

The Composers and Lyricists Guild of America

15. The Composers and Lyricists Guild of America is the exclusive bargaining agent for composers employed by major producers of theatrical motion pictures and television films. The large majority of its members are also members of ASCAP and most of its officers are members of ASCAP.

16. On or about June 1, 1960 the Guild concluded a collective bargaining agreement, known as the "Minimum Basic Agreement of 1960," with the Association of Motion Picture Producers, representing Columbia Pictures Corp., Warner Bros. Pictures, Inc., Twentieth Century-Fox Film Corp., Metro-Goldwyn-Mayer, Inc., Paramount Pictures, Inc., Walt Disney Productions, Inc., and Allied Artists, Inc. A copy of this agreement is annexed hereto as Exhibit 4. The agreement covers persons who are employed by a producer for the purpose of composing music or lyrics for use in the production of films intended either primarily

for exhibition on television or for television exhibition after initial exhibition in motion picture theatres.

17. With respect to television performance rights, the foregoing agreement provides (in Article 11(c)) that:

> "In order to assure the Composer of participation in the revenue which may be derived from performance of the Compositions, Producer agrees that in the event the Composer is, on the date of his employment by Producer, a member or licensor of a Society, Producer will, and it does hereby, transfer and assign the world-wide Performing Rights (as hereinabove defined) in and to the compositions to the Composer and a publisher of Producer's choice, which publisher may, but need not, be a subsidiary or affiliate of Producer, but which publisher shall be a member or licensor of the same Society, or of an affiliate of the same Society, as the Composer."

18. The purpose of the above quoted provision, as represented to this Court in the present proceedings by the Guild's counsel (Affidavit of Abraham Marcus, January 17, 1962, page 16), is to assure "that the performing right to the music in the films (both theatrical and television) be channeled to the performing right society of the composer's affiliation," which, as the Guild's counsel represented to the Court, in most instances is ASCAP.

19. The Guild is presently engaged in negotiating with the remaining motion picture and television film producers to enter into agreements similar to Exhibit 4. Pending

completion of these negotiations, the parties have agreed on interim provisions either reserving performing rights to the composer or requiring that they be transferred to the composer's performing rights society.

ASCAP's Existing Local Station Blanket Licenses and Network Licenses

20. ASCAP's existing local station blanket licenses limit, restrict, and interfere with the right of ASCAP members to issue to any user non-exclusive performance licenses by providing (par. 5(H)) that no payment shall be required thereunder with respect to a local commercial television program of the broadcaster presented by motion picture or by transcription if a license has been granted by ASCAP at the source to perform such film, but allowing no such credit to the broadcaster if a license at the source has been granted by a member of ASCAP individually. A similar provision is contained in ASCAP's existing network licenses (par. 5(H)).

21. By reason of all of the foregoing restrictive agreements and arrangements, film producers are inhibited, as long as ASCAP's existing local television stations continue in effect, from obtaining from composers and other copyright owners television performance licenses simultaneously with the recording licenses, "dramatic" music licenses, and theatrical motion picture performance licenses which film producers presently obtain, and ASCAP's members are limited and restricted from issuing non-exclusive

television performance licenses individually with respect to such music, in violation of Section IV(B) of the Amended Final Judgment herein. Film producers will be able to acquire, and ASCAP members individually to grant, television performance rights at the source only if broadcasters obtain the television performance licenses for which petitioners have applied to ASCAP and to the Court in the within proceedings.

V.

OFFER OF FACTS TO PROVE THAT PETITIONER'S PROPOSED LICENSES ARE A REASONABLE MEANS OF GIVING BROADCASTERS THE BENEFITS OF COMPETITION IN THE LICENSING OF FILM MUSIC.

1. ASCAP's existing television performance licenses are not indispensable in order adequately to compensate music publishers and composers whose works appear in films shown on television. Film producers commonly contract with authors of literary material, directors, actors and others to apply a specified percentage of the receipts realized through the sale or licensing of particular films towards the latter's compensation, or otherwise to make payments based upon the number of television performances of the film. To assure that the producer makes the necessary payments, such agreements commonly provide that the producer shall maintain or have access to records showing all cities in which films are telecast, the number of telecasters in each city, the television stations on which

telecast, and the dates thereof. Such agreements further commonly provide that if the producer sells, transfers, assigns or otherwise disposes of its rights in any film, or in the event of a foreclosure of any chattel mortgage, pledge, lien or security agreement affecting the title to the motion picture film, the party acquiring the film shall make the required compensation payments.

2. Petitioners' proposed licenses would not present ASCAP with unreasonably burdensome problems of policing compliance with the licenses by local station. It would not be necessary to require licensees to maintain elaborate records showing compositions performed on each licensee's broadcasts, such as are required under ASCAP's existing "per program" licenses. In order to determine whether a program is covered or excluded from the proposed license it would only be necessary for the broadcaster to maintain records showing particular filmed programs played. Such records must be maintained by broadcasters under the FCC's existing rules and regulations. Music "cue" sheets showing the date a film is produced and identifying the music used in it are regularly prepared by film producers and furnished to ASCAP for use in connection with ASCAP's present music use surveys.

3. To avoid prejudice to ASCAP members vis-a-vis the members of Broadcast Music, Inc. ("BMI"), another music rights licensing organization, petitioners offered to ASCAP to defer the effective date of the provisions for exclusion

of future-produced pre-recorded programs in petitioners' proposed licenses until such time as a like exclusion is applicable with respect to television broadcasters' performance licenses with BMI.

4. Adoption of petitioners' proposed license would not forthwith withdraw from the coverage of petitioners' proposed licenses a substantial portion of the programs covered by ASCAP's existing local station licenses. Under petitioners' proposed licenses, stations would continue to make payments with respect to all pre-recorded program material heretofore produced, or whose production is commenced prior to February 28, 1962 or such other date as may be fixed by the Court. At the present time thousands of theatrical motion picture films, television film series, and other television films are available for broadcasting by local stations, and are likely to continue to comprise the bulk of pre-recorded material presented by local stations for a substantial period of time.

VI.

Offer of facts to prove that petitioners' proposed licenses are consistent with the provisions of the amended final judgment concerning "blanket" and "per program" licenses.

1. In prior proceedings under Section 9 of the Amended Final Judgment herein ASCAP has repeatedly acknowl-

edged its obligation under the decree to issue both "blanket" and "per program" licenses to broadcasters.*

2. ASCAP's position that a license is a "blanket" or "per program" license within the meaning of the Amended Final Judgment only if it covers all of the programs of the licensee, and that for this reason petitioners' proposed licenses are not "blanket" or "per program" licenses, is inconsistent with the terms of ASCAP's existing blanket and per program licenses for the reason that such licenses presently exclude from their coverage all network television programs (pars. 1(A) and 2(B) of the blanket license and pars. 1(A) and 2(D) of the per program license), programs consisting of "dramatic" musical presentations (pars. 1(B) of the blanket and per program licenses) and "cooperative programs" (par. 5(F) of the blanket license and par. 4(F) of the per program license).

3. Petitioners' position that a license is a "blanket" license within the meaning of the Amended Final Judgment if it requires the licensee to make payments with respect to programs covered by the license irrespective of whether or not such programs contain ASCAP music, and that a license is a "per program" license if it requires the licensee to make payments only with respect to programs covered by the license which also use ASCAP music is consistent

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* Excerpts from such prior proceedings are set out in Appendix A annexed hereto.

both with the terms of the existing licenses and the licenses petitioners seek in this proceeding.

Dated:

April 17, 1962

Respectfully submitted,

Donovan Leisure Newton & Irvine
Attorneys for Petitioners
2 Wall Street
New York 5, New York

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APPENDIX A

In a proceeding brought by a group of television stations in 1951 under Section 9 of the Amended Final Judgment herein, ASCAP moved to have the Judgment amended so as to relieve ASCAP from its obligation under the Judgment to issue "per program" licenses to stations holding music performance licenses from BMI. Set out below is Section 7 of the Judgment showing ASCAP's proposed additions, which are italicized:

"'Defendant ASCAP, in licensing rights for public performance for radio broadcasting and telecasting, is hereby:

(A) Enjoined and restrained from issuing any license, the fee for which

(1) in the case of commercial programs, is based upon a percentage of the income received by the licensee from programs which include no compositions in the ASCAP repertory, or

(2) in the case of sustaining programs, does not vary in proportion either (a) to the performance of the compositions in the ASCAP repertory during the term of the license, or (b) to the number of programs on which such compositions or any of them are performed,

unless the radio broadcaster or telecaster to whom such license shall be issued shall desire a license on either or both of such basis, *or unless such radio or television broadcaster shall have accepted a license from Broadcast Music, Inc. or any other organization*

licensing the right of public performance if such organization is or shall be owned or controlled by broadcasters or telecasters.

(B) Ordered and directed to issue to any unlicensed radio or television broadcaster, upon written request, per program licenses, the fee for which

(1) in the case of commercial programs, is, at the option of ASCAP, either (a) expressed in terms of dollars, requiring the payment of a specified amount for each program in which compositions in the ASCAP repertory shall be performed, or (b) based upon the payment of a percentage of the sum paid by the sponsor of such program for the use of the broadcasting or telecasting facilities of such radio or television broadcaster,

(2) in the case of sustaining programs, is at the option of ASCAP, either (a) expressed in terms of dollars, requiring the payment of a specified amount for each program in which compositions in the ASCAP repertory shall be performed, or (b) based upon the payment of a percentage of the card rate which would have been applicable for the use of its broadcasting facilities in connection with such program if it had been commercial, and

(3) subject to the other provisions of Section VIII, takes into consideration the economic requirements and situation of those stations having relatively few commercial announcements and a relatively greater percentage of sustaining programs, with the objective that such stations shall have a genuine economic choice between per program and blanket licenses. *The provisions of this Subsection (B) shall not apply where such radio*

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broadcaster or telecaster shall have accepted a license from Broadcast Music, Inc., or any other organization licensing the right of public performance if such organization is or shall be owned or controlled by broadcasters or telecasters.

(C) Enjoined and restrained from requiring or influencing the prospective licensee to negotiate for a blanket license prior to negotiating for a per program license *if such prospective licensee is entitled under the provisions of this Section VII to a per program license.*' "

In support of ASCAP's foregoing motion (which was subsequently withdrawn) Otto Harbach, then president of ASCAP, submitted an affidavit dated August 7, 1951, in which he stated with reference to Section 7 of the Judgment that:

" '. . . the purpose of making a "per program" license available was to afford an optional basis of licensing for those broadcasters who preferred to pay for copyrighted music only on the basis of receipts from those individual programs which contained such music.' " (p. 2)

Likewise, ASCAP's counsel submitted an affidavit dated June 27, 1952, stating that:

" 'The purpose of making a "per program" license available was to afford an optional basis of licensing for those broadcasters who preferred to pay for copyrighted music only on the basis of charges to sponsors of individual programs which contain music in the ASCAP repertory.' " (p. 5)

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In a recent proceeding by a group of radio stations under Section 9 of the Amended Final Judgment herein, Oscar Hammerstein on January 23, 1959, submitted an affidavit on behalf of ASCAP in which he stated:

> "Since 1941 in accordance with the original Consent Judgment entered March 4, 1951 and the Amended Final Judgment herein, the Society has offered both blanket licenses and per program licenses to users in the broadcasting industry. The difference between the two forms of licensing, both of which authorize the user to perform any compositions in the Society's repertory—is in the method of computing license fees." (p. 2)

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EXHIBIT 1

AGREEMENT made this day of , 19 by and between

(herein called "Company"), and

(herein called "Composer").

In consideration of the mutual covenants herein contained, the parties hereto have agreed and do agree as follows:

1. Composer, as an independent contractor, shall compose, prepare and deliver to Company certain original musical material (hereinafter referred to as the "music"), more particularly described as follows (it being understood that the mention of any program or program series in said description is for purposes of identification only and shall in no way restrict Company's rights in the music, and the use thereof, as set forth in this agreement):

2. (a) For all rights herein granted to Company, and for performance by Composer of all obligations hereunder, Company shall pay a fee of:

payable within one (1) week after the delivery of the music.

(b) Nothing herein contained shall be deemed to impose any obligation on Company to use or authorize the use of

the music, and Company shall have fully discharged its obligations to Composer hereunder by payment to Composer of the amount specified in subparagraph (a) of this paragraph 2.

3. *Additional Paragraphs; Riders:* This agreement includes additional paragraphs 4 through 10, attached hereto and by this reference made a part hereof. Composer by execution of this agreement below, acknowledges that Composer has read said additional paragraphs and that Composer is fully aware of the provisions therein contained. If any riders, duly initialled by Company and Composer, are attached to this agreement said riders shall be considered as a part of this agreement as though fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

_____ _____

(Composer) (Company)

By: _____

—1—

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4. Composer shall deliver one copy of the music, fully scored for an orchestra, consisting of such instrumentation as Company shall designate, to Company within ten (10) days from and after the date of this agreement.

5. It is understood and agreed that Composer may compose the music at such times and places as Composer may choose, subject only to Composer's obligation to make timely delivery of the music in accordance with the terms of this agreement. It is further agreed that Composer may employ the services of third parties in connection with the composing and preparation of the music, provided that said third parties shall be Composer's employees for all purposes whatsoever and shall be employed by Composer at Composer's sole cost and expense and provided further that employment of such third parties shall in no manner affect the grant of rights in the music or Composer's warranties, as set forth in this agreement.

6. (a) Upon composition of the music, as aforesaid, all right, title and interest therein shall automatically vest in Company, and Company shall be entitled to copyright therein, including statutory copyright and all renewals thereof, as copyright proprietor; in connection with the foregoing, and without limiting the generality thereof, Composer agrees to and does hereby grant to Company all copyright renewal rights which may hereafter be vested in Composer as author of music and Composer expressly acknowledges that the payment of the fee specified in paragraph 2 above includes payment for the grant of such copy-

right renewal rights hereunder. Company may freely assign and grant rights and licenses with respect to the music and any copyright therein, (including any renewals thereof) and in this connection Composer, as author thereof, agrees to execute and deliver to Company any and all instruments required by Company in connection with the use and enjoyment of the music and of Company's rights therein and thereto (including, but not limited to, any instruments necessary to enable Company to renew the copyright in the United States or elsewhere) and Composer hereby appoints Company as Composer's attorney-in-fact to execute any such instruments in Composer's name on Company's behalf.

(b) Without in any way limiting the generality of the foregoing, it is agreed that Company shall have the exclusive right to use, adapt, arrange, change, add to, or subtract from the music and to combine the same with other musical and or literary material and to publish, record, produce; reproduce, transmit, perform, broadcast, telecast, and or otherwise communicate the same or any version or versions thereof by any means (including, but not limited to, in synchronization with motion pictures) whether now known or hereafter devised, publicly for profit or otherwise; it being understood that Composer hereby waives any so-called "moral rights" which may now be or may hereafter be recognized.

(c) Further, in the exercise of its rights hereunder and without in any way limiting the generality of the foregoing,

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Company shall have, as owner and copyright proprietor of the music, the complete control of the publication of the music and of all rights incident thereto, including, but not limited to, the right to license the manufacture of phonograph records and other recordings of the music and the right to license motion picture synchronization rights (all of which rights are herein sometimes collectively called "music publishing rights").

—2—

C-1 Composer
12/60

(cc) Without limiting the generality of any rights granted under this agreement, Composer expressly acknowledges that Company, its successors, assigns and/or licensees shall have the right to collect the publisher's share of performance royalties becoming due and payable from any small performing rights society by reason of performance of the music; it is further understood that Company may represent to any foreign small performing rights society requiring an acknowledgment of the type herein set forth that Composer has, in fact, made the acknowledgment herein contained.

—2a—

C-1 Composer 3/61

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(d) Notwithstanding anything in subparagraph (a) of this paragraph 6 to the contrary, during any period or periods of time, during which Composer is affiliated with any small performing rights society (herein called the "Society"), Company shall and does hereby, under and pursuant to this paragraph, license back to Composer non-dramatic (i.e., "small") performing rights in the music so as to enable Composer to license such non-dramatic performing rights to Society, it being understood, in this connection, that this agreement shall not be construed as granting Company (or any assignee or licensee of all or any of Company's rights under this agreement) the right to exercise such non-dramatic performing rights during such period or periods without obtaining a license therefor from Society, except that Company and/or any such assignee or licensee, may exercise such non-dramatic performing rights in the music by reason of, under and pursuant to this agreement,

(i) during any period or periods during which such non-dramatic performing rights are not controlled by and available for license at standard rates from Society, or in the case of public performances of the music in geographical areas outside of Society's jurisdiction, from any other organization or society which is affiliated with Society or which has a collection agreement with Society and which controls the non-dramatic performing rights in any geographical area in which the music is to be performed; and/or

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(ii) in connection with theatrical exhibitions in the United States, its territories and possessions; and or

(iii) in connection with any performance of the music within the United States, its territories and possessions, which is not a public performance for profit.

7. Composer hereby warrants that Composer is free and able to enter into and fully perform this agreement and to grant all rights herein granted. Further, Composer warrants that the music in the form in which it is delivered shall be wholly original with Composer and shall not be copied from any other work and shall not, nor shall the use thereof infringe or violate the copyright or any common-law right or any personal, proprietary, or other right of any kind whatsoever of any person, firm, corporation or association. If any of the music delivered hereunder is described as based upon traditional or public domain compositions, Composer warrants that such compositions are in the public domain throughout the world and that Composer's treatment of such compositions is original and shall not be copied from any work other than such public domain compositions, nor shall the use thereof infringe or violate the copyright or any common-law right or any personal, proprietary or other right of any kind whatsoever of any person, firm, corporation or association. Notwithstanding the foregoing, if any of the music delivered hereunder is described as based upon musical materials furnished by Company or as based upon traditional or public domain

compositions furnished by Company, Composer makes no warranty as to the originality or ownership of such musical materials or compositions.

8. Composer will indemnify and hold Company, its successors, assigns and licensees, any stations over which the music shall be broadcast, the sponsors, if any, of any program on which it is broadcast, and their advertising agencies, if any, and any other parties who shall utilize the music or any part thereof in any way with Company's permission, and the directors, officers, agents and employees

of any of the foregoing, free and harmless from any and all claims, damages, liabilities, costs and expenses, including reasonable counsel fees, arising out of any use of the music, or any part thereof, or arising out of any breach by Composer of any warranty or agreement made by Composer herein.

9. It is understood and agreed that all or part of this agreement and all the results and proceeds thereof may be assigned by Company to any third party without Composer's consent and in this event, Company's successors and/or assigns shall be entitled to any and all rights, privileges, and equities to which Company is entitled under and by virtue of this agreement.

10. (a) This agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and fully to be performed therein.

(b) A waiver by either party of any of the terms and conditions of this agreement in any one instance shall not be construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party.

(c) This agreement contains the entire understanding of the parties hereto relating to the subject matter herein

contained and this agreement cannot be changed, rescinded or terminated orally.

(d) If more than one person signs this agreement as "Composer", the rights and obligations of each such signatory shall be joint and several and all references throughout this agreement to "Composer" shall mean and refer to each signatory individually and to all such signatories jointly, so that a breach of any provision of this agreement shall be deemed a breach of each and all such signatories, it being understood that all such signatories assume each every duty and obligation hereunder, both jointly and severally. All payments specified herein shall be in full satisfaction of the services of all such signatories and, if this agreement does not provide for a division of such payments between such signatories, Company shall have no responsibility or liability with regard to the division of such payments between such signatories.

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MUSIC PUBLISHING RIGHTS RIDER ATTACHED TO AND FORMING A PART OF THAT CERTAIN AGREEMENT

BETWEEN (COMPANY), AND (COMPOSER).

Dated

With respect to Company's exercise of music publishing rights, (as defined in subparagraph 6(c) of this agreement, Company agrees to pay Composer as royalties:

(i) sums equal to (%) per cent of the net proceeds (as defined below) received by Company from third parties for licenses for the manufacture of commercial phonograph records and or licenses of theatrical motion picture synchronization rights (as defined below);

(ii) for regular piano copies, if any, sold and paid for at wholesale in the United States and or Canada, sums equal to three (3¢) per copy;

(iii) sums equal to (%) per cent of net proceeds received by Company from third parties for regular piano copies, if any, sold and paid for at wholesale outside of the United States and or Canada;

(iv) with respect to orchestrations, including band arrangements, if any, sold and paid for at wholesale anywhere in the world, sums equal to ten (10%) per cent of the wholesale price therefor, after trade discounts;

(v) with respect to any song book, folio or similar publication, if any, sold and paid for at whole-

sale anywhere in the world, sums equal to the amount resulting from dividing ten (10%) per cent of the wholesale price after trade discounts, therefor by the total number of copyrighted musical compositions contained in such publication.

No royalties shall be payable hereunder for professional material not sold or resold; further, no royalties shall be payable to Composer with respect to uses of the music except as hereinabove expressly set forth. The term "theatrical motion picture rights" as used in this Rider refers to synchronization rights granted with respect to motion pictures intended primarily and initially for theatrical release by direct projection before paid-admission audiences; in no event shall such term refer to motion pictures or other methods of recordation, whether now known or hereafter devised, which are produced primarily and initially for television broadcasting by any means whatsoever. The term "net proceeds" as used hereinabove, shall mean all moneys actually received by Company (or any assignee of Company's rights hereunder) which are directly attributable to licenses issued authorizing the manufacture of commercial phonograph records and or licenses relating to theatrical motion picture synchronization rights, and or for the exercise of publication rights referred to in subclause (iii) above, as the case may be, after the deduction of all costs, expenses, fees and commissions which are direct'y attributable to the exploitation of the music by way of commercial phonograph records or by way of theatrical motion picture synchronization, or by way of publication,

as the case may be, computed in accordance with good and standard accounting practices. In the event that Company licenses the music in a form containing lyrics or other musical materials composed by any third party or parties, then Composer's royalties hereunder, with respect to the music in such form, shall be reduced proportionately to an amount equal to the royalties payable hereunder, divided by the number of composers and lyricists (including Composer) who have furnished materials and services for such music. Company shall render royalty statements to Composer, accompanied by any remuneration due Composer, such statements to be rendered at least once during each calendar year during which royalties are payable.

If, for any reason, exportation of money from any foreign country, territory, or place, to the United States should be prohibited, prevented or rendered commercially impracticable, the amount received by Company (if Company's share thereof is actually paid to Company in such foreign country, territory or place) shall not be considered gross receipts hereunder unless, and until the same shall have actually been received in the United States in United States currency, less any discounts, losses, costs or expenses suffered by or imposed upon Company with respect to transmittal of such money to the United States and the conversion thereof to United States currency, provided, however, that if Composer so requests in writing, that portion of such blocked or frozen funds which would represent Composer's share of net proceeds of such gross receipts, but for being frozen or blocked, shall be deposited

in Composer's name in any bank or depository designated by Composer in such country wherein such funds are blocked or frozen subject to the laws of such country with respect to such deposits and withdrawals by Composer therefrom. Composer shall have the right to inspect Company's books and records relative to gross receipts derived from use of the music hereunder provided such inspection shall be made at Company's offices during reasonable business hours.

Initial Here

C-1 Composer
12/60

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EXHIBIT 2

American Guild of
Authors & Composers

Authorized for use by _____

_____

under agreement dated _____ 19___ and *Void Valid Unless Countersigned by SPA*

[EMBLEM]

Copyright 1948
Songwriters Protective Association

1947 Revised

UNIFORM POPULAR SONGWRITERS CONTRACT

Agreement made this _____ day of _____, 19___

between _____

(hereinafter called "Publisher") and _____

_____

jointly and or severally hereinafter collectively called "Writer"):

WITNESSETH:

Composition

1. The Writer hereby sells, assigns, transfers and delivers to the Publisher a certain heretofore unpublished

original musical composition, written and or composed by the above-named Writer now entitled

(hereinafter referred to as "the composition"), including the title, words and music thereof, and the right to secure copyright therein throughout the entire world, and to have and to hold the said copyright and all rights of whatsoever nature thereunder existing, for the original term of the United States copyright or for the period of twenty-eight years from the date of publication in the United States, whichever may be shorter, and subject to the terms of this contract.

ASCAP Membership

2. In all respects this contract shall be subject to any existing agreements between any of the parties hereto and the American Society of Composers, Authors and Publishers.

Warranty

3. The Writer hereby warrants that the composition is his sole, exclusive and original work, that he has full right and power to enter the within contract, and that there exists no adverse claim to or in the composition, except as aforesaid in Paragraph 2 hereof and except such rights as are specifically set forth in Paragraph 23 hereof.

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ROYALTIES

4. In consideration of this contract, the Publisher agrees to pay the Writer as follows:

ADVANCE

(a) $_____ as an advance against royalties, receipt of which is hereby acknowledged, which sum shall remain the property of the Writer and shall be recoupable only from payments hereafter becoming due the Writer under this contract.

PIANO COPIES

(b) In respect of regular piano copies sold and paid for in the United States and Canada, a royalty per copy according to whichever one of the following provisions is checked:

FIXED ROYALTY

☐ (i) _____¢ (in no case less than 3¢ per copy.)

SLIDING SCALE

☐ (ii) _____¢ (in no case, however, less than 1½¢) of the wholesale selling price of the first [illegible] copies or less, but in no event less than 2½¢ per copy; plus

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_____% (in no case, however, less than 14%) of the wholesale selling price of copies in excess of 100,000 and not exceeding 200,000, but in no event less than 3¢ per copy; plus

_____% (in no case, however, less than 16%) of the wholesale selling price of copies in excess of 200,000 and not exceeding 300,000, but in no event less than 3½¢ per copy; plus

_____% (in no case, however, less than 18%) of the wholesale selling price of copies in excess of 300,000 and not exceeding 400,000, but in no event less than 4¢ per copy; plus

_____% (in no case, however, less than 20½%) of the wholesale selling price of copies in excess of 400,000 and not exceeding 500,000, but in no event less than 4½¢ per copy; plus

_____% (in no case, however, less than 23%) of the wholesale selling price of all copies in excess of 500,000, but in no event less than 5¢ per copy.

FOREIGN ROYALTIES

(c) _____% (in no case, however, less than 50%) of all net sums received by the Publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and or instruments, and or other copies of the composition sold in any country

other than the United States and Canada, provided, however, that if the Publisher should sell such copies through or cause them to be sold by a subsidiary or affiliate which is actually doing business in a foreign country, then in respect of such sales, the Publisher shall pay to the Writer not less than 5% of the market retail selling price in respect of each such copy sold and paid for.

ORCHESTRATIONS AND OTHER ARRANGEMENTS, ETC.

(d) _____% (in no case, however, less than 10%) of the wholesale selling price (after trade discounts if any) of each copy sold and paid for in the United States and Canada, of for export from the United States, of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and or instruments, and or other copies of the composition (other than regular piano copies).

PUBLISHER'S SONG BOOK, SONG SHEET, FOLIO, ETC._____.

(e) (i) If the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication issued by the Publisher containing at least four, but not more than twenty-five musical compositions, the royalty to be paid by the Publisher to the Writer shall be an amount determined by dividing 10% of

the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of the Publisher's copyrighted musical compositions included in such publication. If such publication contains more than twenty-five musical compositions, the said 10% shall be increased by an additional ½% for each additional musical composition. The composition shall not, however, be included in any such publication earlier than six months after the date on which regular piano copies of the composition shall have been published, except that said six months period may be reduced to three months with the Writer's written consent given at any time after the expiration of three months.

LICENSEE'S SONG BOOK, SONG SHEET, FOLIO, ETC.

(ii) If, pursuant to a license granted by the Publisher to a licensee not controlled by or affiliated with it, the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication, containing at least four musical compositions, the royalty to be paid by the Publisher to the Writer shall be that proportion of 50% of the gross amount received by it from the licensee, as the number of uses of the composition under the license

and during the license period, bears to the total number of uses of the Publisher's copyrighted musical compositions under the license and during the license period. The lyrics alone of the composition may be included in such a publication at any time, but the lyrics and music thereof, in combination, shall not be included earlier than two years after the date on which regular piano copies of the composition shall have been published. Such royalties shall be computed and paid within 30 days after the expiration of the term of each license, but if any such license term is in excess of one year, such royalties shall be computed and paid annually.

(iii) In computing the number of the Publisher's copyrighted musical compositions under subdivisions (i) and (ii) hereof, there shall be excluded musical compositions in the public domain and arrangements thereof and those with respect to which the Publisher does not currently publish and offer for sale regular piano copies.

(iv) Royalties on publications containing less than four musical compositions shall be payable at regular piano copy rates.

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PROFESSIONAL MATERIAL AND FREE COPIES

(f) As to "professional material" not sold or resold, no royalty shall be payable. Free copies of the lyrics of the composition shall not be distributed except under the following conditions: (i) with the Writer's written consent; or (ii) when printed without music in limited numbers for charitable, religious or governmenal purposes, or for similar public purposes, if no profit is derived, directly or indirectly; or (iii) when authorized for printing in a book, magazine or periodical, where such use is incidental to a novel or story (as distinguished from use in a book of lyrics or a lyric magazine or folio), provided that any such use shall bear the Writer's name and the proper copyright notice; or (iv) when distributed solely for the purpose of exploiting the composition, provided, that such expioitation is restricted to the distribution of limited numbers of such copies for the purpose of influencing the sale of the composition, that the distribution is independent of the sale of any other musical compositions, services, goods, wares or merchandise, and that no profit is made, directly or indirectly with connection therewith.

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MECHANICALS, ELECTRICAL TRANSCRIPTION SYNCHRONIZATION, ALL OTHER RIGHTS

(g) .....% (in no case, however, less than 50%) of:

All gross receipts of the Publisher in respect of any licenses (including statutory royalties) authorizing the manufacture of parts of instruments serving to mechanically reproduce the composition, or to use the composition in synchronization with sound motion pictures, or to reproduce it upon a electrical transcription for broadcasting purposes; and of any and all gross receipts of the Publisher from any other source or right now known or which may hereafter come into existence, except as provided in subdivision (i) of this paragraph 4.

LICENSING AGENT'S CHARGES

(h) If the Publisher administers licenses authorizing the manufacture of parts of instruments serving to mechanically reproduce said composition, or the use of said composition in synchronization or in timed relation with sound motion pictures, or its reproduction upon electrical transcriptions, or any of them, through an agent, trustee or other administrator acting for a substantial part of the industry and not under the exclusive control of the Publisher (hereinafter sometimes referred to as licensing agent), the Publisher, in determining his receipts,

shall be entitled to deduct from gross license fees paid by the Licensees, a sum equal to the charges paid by the Publisher to said licensing agent, provided, however, that in respect to synchronization or timed relation with sound motion pictures, said deduction shall in no event exceed $150.00 or 10% of said gross license fee, whichever is less; in connection with the manufacture of parts of instruments serving to mechanically reproduce said composition, said deductions shall not exceed 2½% of said gross license fee, and in connection with electrical transcriptions, said deductions shall not exceed 10% of said gross license fee.

PERFORMING SOCIETY ROYALTIES

(i) The Writer shall not be entitled to any share of the monies distributed to the Publisher by the American Society of Composers, Authors and Publishers or any other performing rights society throughout the world which makes a distribution to writers either directly or through the American Society of Composers, Authors and Publishers of an amount which, in the aggregate, is at least equal to the aggregate amount distributed to publishers.

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BLOCK LICENSES

(j) The Publisher agrees that the use of the composition will not be included in any bulk or block license heretofore or hereafter granted, and that it will not grant any bulk or block license to include the same, without the written consent of Songwriters' Protective Association on behalf of the Writer in each instance, except: (i) that the Publisher may grant such licenses with respect to electrical transcription for broadcasting purposes, but in such event, the Publisher shall pay to the Writer that proportion of 50% of the gross amount received by it under each such license as the number of uses of the composition under each such license during each such license period bears to the total number of uses of the Publisher's copyrighted musical compositions under each such license during each such license period; in computing the number of the Publisher's copyrighted musical compositions for this purpose, there shall be excluded musical compositions in the public domain and arrangements thereof and those with respect to which the Publisher does not currently publish and offer for sale regular piano copies; and with respect to such licenses, the Publisher shall account to the Writer annually; (ii) that the Publisher may appoint agents or representatives in countries outside of the United States and Canada to use and to grant licenses for the

use of the composition on the customary royalty fee basis under which the Publisher shall receive not less than 10% of the marked retail selling price in respect of regular piano copies, and 50% of all other revenue; if, in connection with any such bulk or block license, the Publisher shall have received any advance, the Writer shall not be entitled to share therein, but no part of said advance shall be deducted in computing the composition's earnings under said bulk or block license. A bulk or block license shall be deemed to mean any license or agreement, domestic or foreign, whereby rights are granted in respect of two or more musical compositions.

TELEVISION AND NEW USES

(k) Except to the extent that the Publisher and Writer have heretofore or may hereafter assign to or vest in the American Society of Composers, Authors and Publishers the said rights or the right to grant licenses therefor, it is agreed that no licenses shall be granted without the written consent, in each instance, of the Writer for the use of the composition by means of television, or by any means, or for any purposes not commercially established, or for which licenses were not granted by the Publisher on musical compositions prior to June 1, 1937.

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WRITER'S CONSENT TO LICENSES.

(i) The Publisher shall not, without the written consent of the Writer in each case, give or grant any right or license (i) to use the title of the composition, or (ii) for the exclusive use of the composition in any form or for any purpose, or for any period of time, or for any territory, other than its customary arrangements with foreign publishers, or (iii) to give a dramatic representation of the composition or to dramatize the plot or story thereof, or (iv) for a vocal rendition of the composition in synchronization with sound motion pictures, or (v) for any synchronization use thereof after the expiration of ten years from the date on which regular piano copies of the composition shall have been first published, or (vi) for the use of the composition or a quotation or excerpt therefrom in any article, book, periodical, advertisement or other similar publication. If, however, the Publisher shall give to the Writer written notice, by registered mail or telegram, specifying the right or license to be given or granted, the name of the licensee and the terms and conditions thereof, including the price or other compensation to be received therefor, then, unless the Writer (or any one or more of them) shall, within seventy-two hours (exclusive of Saturdays, Sundays and holidays) after the delivery of such notice to the address of the Writer hereinafter designated,

object thereto, the Publisher may grant such right or license in accordance with the said notice without first obtaining the consent of the Writer. Such notice shall be deemed sufficient if sent to the Writer at the address or addresses hereinafter designated or at the address or addresses last furnished to the Publisher in writing by the Writer.

TRUST FOR WRITER

(m) Any portion of the receipts which may become due to the Writer from license fees (in excess of offsets), whether received directly from the licensee or from any licensing agent of the Publisher, shall, if not paid immediately on the receipt thereof by the Publisher, belong to the Writer and shall be held in trust for the Writer until payment is made; the ownership of said trust fund by the Writer shall not be questioned whether the monies are physically segregated or not.

WRITER PARTICIPATION

(n) The Publisher agrees that it will not license as a result of which it will receive any financial benefit in which the Writer does not participate.

WRITER CREDIT

(o) Every license or authorization issued by the Publisher authorizing the publication of the composition or any part thereof shall contain a provision requiring the user thereof to print, in addition to the copyright notice, the name of the Writer as the author thereof.

CHANGE IN PIANO COPY ROYALTY.

(p) If a fixed royalty is designated to be payable with respect to regular piano copies of the composition (as provided in paragraph 4(b)(i)), then, if at any time, the Publisher shall increase or decrease the wholesale selling price which it charged on January 1, 1947 to regular music jobbers for regular piano copies of musical compositions of the same class or category as the composition, then the said fixed royalty shall be increased or decreased in proportion to the change in said wholesale selling price.

WRITERS' RESPECTIVE SHARES

5. Whenever the term "Writer" is used herein, it shall be deemed to mean all of the persons named herein below, and any and all royalties herein provided to be paid to the Writer shall be paid jointly to the following persons if

there be more than one, and shall be divided among them as follows:

Name	Share

PUBLICATION

6. (a) The Publisher shall, within one year from the date hereof, make, publish and offer for sale regular piano copies of the composition in the form and through the channels customarily employed by it for that purpose, and in addition, either (i) cause a commercial phonograph recording to be made and distributed in the customary form and through the customary commercial channels, or (ii) make, publish and offer for sale a dance orchestra arrangement. As an alternative to compliance with (i) or (ii), the Publisher shall pay to the Writer the sum of $250.00 less the aggregate of any advances paid, as stated in Paragraph 4(a) hereof, and any royalties paid to the Writer within said one-year period. If, in the statement of "Special Exceptions" hereinafter set forth, the composition shall have been designated as one which is not intended for publication

in regular piano copies, the Publisher shall be deemed to have complied with this paragraph by the making and distribution of a commercial phonograph recording and either the publication of a dance orchestra arrangement or the payment of the $250.00 all as aforesaid.

FAILURE TO PUBLISH

(b) Should the Publisher fail to comply with the provisions of subdivision (a) hereof, the Writer shall be entitled to demand in writing the return of the composition at any time after the expiration of said year, whereupon the Publisher must, within one month after the receipt of such notice, either comply with the provisions of subdivision (a) hereof, in which event this contract will remain in full force and effect, or upon its failure so to comply, this contract shall terminate and all rights of any and every nature in and to the composition and in and to any and all copyrights secured thereon in the United States and throughout the world, shall re-vest in and become the property of the Writer and shall be reassigned to him by the Publisher; the Writer will not be obligated to return or pay to the Publisher any advance or indebtedness as a condition of such re-assignment; the said re-assignment shall be in accordance with and subject to the provisions of Paragraph 13 hereof, and in addition, the Publisher shall pay to the Writer all gross sums which it has theretofore or may thereafter receive in respect of the composition.

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WRITER'S COPIES

(c) The Publisher shall furnish the Writer copies of the composition which it publishes and shall use its best efforts to furnish or cause to be furnished to the Writer copies published by others.

FOREIGN COPYRIGHT

7. (a) Each copyright on the composition in countries other than the United States shall be secured only in the name of the Publisher, and the Publisher shall not at any time divest itself of said foreign copyright directly or indirectly, except to the extent that it may be obligated to do so by virtue of an agreement entered into by the Publisher with a foreign publisher prior to January 1, 1947, and then only for the term of said agreement.

FOREIGN PUBLICATION

(b) Except to the extent that the Publisher is obligated to a foreign publisher or licensee by written agreement made prior to January 1, 1947, and then only for the term of said agreement, no rights shall be granted by the Publisher in the composition to any foreign publisher or licensee inconsistent with the term hereof, nor shall any foreign publication rights in the composition be given to a foreign publisher or licensee unless and until the Publisher shall have complied with the provisions of Paragraph 6 hereof.

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FOREIGN ADVANCE

(c) If foreign rights in the composition are separately conveyed, otherwise than as a part of the Publisher's current and or future catalog, not less than 50% of any advance received in respect thereof shall be credited to the account of and paid to the Writer.

FOREIGN PERCENTAGE

(d) The percentage of the Writer on monies received from foreign sources shall be computed on the Publisher's net receipts, provided, however, that no deductions shall be made for offsets of monies due from the Publisher to said foreign sources; or for advances made by such foreign sources to the Publisher, unless the Writer shall have received at least 50% of said advances.

NO FOREIGN ALLOCATIONS

(e) In computing the receipts of the Publisher from licenses granted in respect of synchronization with sound motion pictures, or in respect of any world-wide licenses, or in respect of licenses granted by the Publisher for use of the composition in countries other than the United States, no amount shall be deducted for payments or allocations to publishers or licensees in such countries.

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TERMS OF CONTRACT

8. All rights in and to the composition and any copyrights secured thereon throughout the world, shall revert to the Writer upon expiration of the original term of the United States copyright or at the end of twenty-eight (28) years from the date of publication in the United States, whichever period shall be shorter. The Publisher shall, at the expiration of said period, execute any and all documents which may be necessary or proper to re-vest in the Writer any and all rights in and to the composition and in and to any copyright in the United States or any other countries throughout the world provided, however, that if the Writer shall sell or assign to some person other than the Publisher, his rights in the United States renewal copyright in the composition, or any of his rights in the composition in the United States or elsewhere, for the period beyond said original term or twenty-eight years, as the case may be, then, unless there shall have been given to the Publisher at least six months' written notice of an intention to offer said rights for sale, the Publisher shall not be obligated to assign to the Writer said rights in countries other than the United States and Canada, and this contract, and the assignment under Paragraph 1 hereof, shall continue in respect of such rights in countries other than the United States and Canada.

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NEGOTIATIONS FOR NEW OR UNSPECIFIED USES

9. If the Publisher desires to exercise a right in and to the composition now known or which may hereafter become known, but for which no specific provision has been made herein, the Publisher shall give written notice to the Writer thereof. Negotiations respecting all the terms and conditions of any such disposition shall thereupon be entered into between the Publisher (and/or the Music Publishers' Protective Association, Inc.) and the Songwriters' Protective Association; and no such right shall be exercised until specific agreement has been made.

ROYALTY STATEMENTS AND PAYMENTS

10. The Publisher shall render to the Writer, hereafter, royalty statements accompanied by remittance of the amount due on or before, each May 15th covering the 3 months ending March 31st; each August 15th covering the 3 months ending June 30th; each November 15th covering the 3 months ending September 30th; each February 15th covering the 3 months ending December 31st; provided, however, that if it shall have heretofore been the custom of the Publisher to render royalty statements accompanied by remittance of the amount due semi-annually, or quarterly at the end of different quarterly periods, such custom may be continued. The Writer may at any time, or from time to time, make written request for a detailed royalty statement, and the Publisher shall, within sixty days, com-

ply therewith. Such royalty statements shall set forth in detail the various items, foreign and domestic, for which royalties are payable hereunder and the amounts thereof, including, but not limited to, the number of copies sold and the number of uses made in each royalty category. If a use is made in a publication of the character provided in Paragraph 4, subdivision (c) hereof, there shall be included in said royalty statement the title of said publication, the publisher or issuer thereof, the date of and number of uses, the gross license fee received in connection with such publication, the share thereto of all the writers under contract with the Publisher, and the Writer's share thereof. There shall likewise be included in said statement a description of every other use of the composition, and if by a licensee or licensees their name or names, and if said use is upon a part of an instrument serving to reproduce the composition mechanically, the type of mechanical reproduction, the title of the label thereon, the name or names of the artists performing the same, together with the gross license fees received, and the Writer's share thereof.

EXAMINATION OF BOOKS

11. (a) The Publisher shall from time to time, upon written demand of the Writer or his representative, permit the Writer or his representative to inspect at the place of business of the Publisher, all books, records and documents relating to the composition and all licenses granted, uses had and payments made therefor, such right of inspection

to include, but not by way of limitation, the right to examine all original accountings and records relating to uses and payments by manufacturers of commercial phonograph records and music rolls; and the Writer or his representative may appoint a certified public accountant who shall at any time during usual business hours have access to all records of the Publisher relating to the composition for the purpose of verifying royalty statements rendered or which are delinquent under the terms hereof.

(b) The Publisher shall, upon written demand of the Writer or his representative, cause any licensing agent in the United States and Canada to furnish to the Writer or his representative, statements showing in detail all licenses granted, uses had and payments made in connection with the composition, which licenses or permits were granted, or payments were received by or through said licensing agent, and to permit the Writer or his representative to inspect at the place of business of such licensing agent, all books, records and documents of such licensing agent, relating thereto. Any and all agreements made by the Publisher with any such licensing agent shall provide that any such licensing agent will comply with the terms and provisions hereof. In the event that the Publisher shall instruct such licensing agent to furnish to the Writer or his representative statements as provided for herein, and to permit the inspection of the books, records and documents as herein provided, then if such licensing agent should refuse to comply with the said instructions, or any of them, the Publisher agrees to institute and prosecute diligently and in good

faith such action or proceedings as may be necessary to compel compliance with the said instructions.

(c) With respect to foreign licensing agents, the Publisher shall make available the books or records of said licensing agents in countries outside of the United States and Canada to the extent such books or records are available to the Publisher, except that the Publisher may in lieu thereof make available any accountants' reports and audits which the Publisher is able to obtain.

DEFAULT IN PAYMENT OR PREVENTION OF EXAMINATION

12. If the Publisher shall fail or refuse, within sixty days after written demand, to furnish or cause to be furnished, such statements, books, records or documents, or to permit inspection thereof, as provided for in Paragraphs 10 and 11 hereof, or within thirty days after written demand, to make the payment of any royalties due under this contract, then the Writer shall have the option, to be exercised upon ten days' written notice, to terminate this contract. However, if the Publisher shall:

(a) Within the said ten-day period:

(i) serve upon the Writer a written notice demanding arbitration; and

(ii) if the demand be for statements, books, records or documents, or to permit inspection thereof, deposit with Music Publishers' Protective Association, Inc., a re-assignment to

the Writer of the copyright and all other rights in and to the composition, to be held in escrow pending the determination of the arbitration, or if the demand be for royalties, then deposit in escrow with Music Publishers' Protective Association, Inc., the amount shown by its books to be due the Writer under the provisions of this contract; and,

(b) Submit to arbitration its claim that it has complied with its obligation to furnish statements, books, records or documents, or permitted inspection thereof, or to pay royalties, as the case may be, or both, and thereafter comply with any award of the arbitrators within ten days after such award or within such time as the arbitrators may specify;

then this contract shall continue in full force and effect as if the Writer's option had not been exercised. But if the Publisher shall fail to comply with the foregoing provisions, then this contract shall be deemed to have been terminated as of the date of the Writer's exercise of his option to terminate this contract.

TERMINATION OF CONTRACT

13. Upon the termination of this contract, all rights of any and every nature in and to the composition and in and to any and all copyrights secured thereon in the United States and throughout the world, shall re-vest in and be-

come the property of the Writer, and shall be re-assigned to the Writer by the Publisher free of any and all encumbrances of any nature whatsoever, provided that:

(a) The said re-assignment by the Publisher may however, be subject to such rights, if any, as may have been vested in a foreign publisher respecting the use of the composition in countries other than the United States and Canada under any agreement made prior to January 1, 1947.

(b) If the Publisher, prior to such termination, shall have granted a domestic license for the use of the composition, not inconsistent with the terms and provisions of this contract, the reassignment may be subject to the terms of such license.

(c) In either of the events mentioned in subdivisions (a) and (b) of this paragraph, however, the Publisher shall assign to the Writer all rights which it may have under any such agreement or license in respect of the composition, including, but not limited to, the right to receive all royalties or other monies earned by the composition thereunder after the date of termination of this contract. Should the Publisher thereafter receive or be credited with any royalties or other monies so earned, it shall pay the same to the Writer.

(d) The Writer shall not be obligated to return or pay to the Publisher any advance or indebtedness as a condition of the re-assignment provided for in this

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Paragraph 13, and shall be entitled to receive the plates and copies of the composition in the possession of the Publisher.

(e) The termination of this contract shall not relieve the Publisher of its obligation to pay any and all royalties which may have accrued to the Writer prior to such termination.

(f) The Publisher shall execute any and all documents and do any and all acts or things necessary to effect any and all re-assignments to the Writer herein provided for.

NOTICES

14. All written demands and notices provided for herein shall be sent by registered mail.

SUITS FOR INFRINGEMENT

15. Any legal action brought by the Publisher against any alleged infringer of the composition shall be initiated and prosecuted at its sole cost and expense, but if the Publisher should fail, within thirty days after written demand, to institute such action, the Writer shall be entitled to institute such suit at his cost and expense. All sums recovered as a result of any such action shall, after the deduction of the reasonable expense thereof, be divided equally between the Publisher and the Writer. No settlement of any such action may be made by either party with-

on first notifying the other: in the event that either party should object to such settlement, then such settlement shall be made if the party objecting assumes the prosecution of the action and all expenses thereof, except that any sums thereafter recovered shall be divided equally between the Publisher and the Writer after the deduction of the reasonable expenses thereof.

INFRINGEMENT CLAIMS

16. (a) If a claim is presented against the Publisher alleging that the composition is an infringement upon some other work or a violation of any other right of another, and because thereof the Publisher is jeopardized, it shall forthwith serve a written notice upon the Writer, setting forth the full details of such claim. The pendency of said claim shall not relieve the Publisher of the obligation to make payment of the royalties to the Writer hereunder, unless the Publisher shall deposit said royalties as and when they would otherwise be payable, in an account in a bank or trust company in the City of New York in the joint names of the Publisher and the Writer. If no suit be filed within nine months after said written notice from the Publisher to the Writer, all monies deposited in said joint account shall be paid over to the Writer plus any interest which may have been earned thereon.

(b) Should an action be instituted against the Publisher claiming that the composition is an infringement upon some other work or a violation of any other right of another, the

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Publisher shall forthwith serve written notice upon the Writer containing the full details of such claim. Notwithstanding the commencement of such action, the Publisher shall continue to pay the royalties hereunder to the Writer unless it shall, from and after the date of the service of the summons, deposit said royalties as and when they would otherwise be payable, in an account in a bank or trust company in the City of New York in the joint names of the Publisher and the Writer, if the said suit shall be finally adjudicated in favor of the Publisher or shall be settled, there shall be released and paid to the Writer all of such sums held in escrow less any amount paid out of the Writer's share with the Writer's written consent in settlement of said action. Should the said suit finally result adversely to the Publisher, the said amount on deposit shall be released to the Publisher to the extent of any expense or damage it incurs and the balance shall be paid over to the Writer.

(c) In any of the foregoing events, however, the Writer shall be entitled to payment of said royalties or the money so deposited at and after such time as he files with the Publisher a surety company bond, or a bond in other form acceptable to the Publisher, in the sum of such payment to secure the return thereof to the extent that the Publisher may be entitled to such return. The foregoing payments or deposits or the filing of a bond shall be without prejudice to the rights of the Publisher or Writer in the premises.

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ARBITRATION

17. Any and all differences, disputes or controversies arising out of this contract shall be submitted to arbitration under the laws of the State of New York, and the parties hereby individually and jointly agree to abide by and perform any award rendered in such arbitration, and agree that a judgment of the Supreme Court of the State of New York may be entered upon such award. Together with the demand for arbitration, the party making said demand shall designate an arbitrator and the adverse party shall, within ten days thereafter, likewise designate an arbitrator. The two arbitrators so chosen shall promptly appoint a third arbitrator who shall act as chairman, and any award concurred in by a majority of the arbitrators shall be binding upon the parties. Should the party against whom arbitration is demanded fail to select an arbitrator, or should the arbitrator selected by the parties be unable to agree upon a third arbitrator, then said arbitrator or arbitrators, as the case may be, shall be designated and appointed in the manner provided by the Arbitration Law of the State of New York.

ASSIGNMENT

18. Except to the extent herein otherwise expressly provided, the Publisher shall not sell, transfer, assign, convey, encumber or otherwise dispose of the composition or the copyright or copyrights secured thereon without the prior written consent of the Writer. The Writer has been induced

to enter into this contract in reliance upon the value to him of the personal service and ability of the Publisher in the exploitation of the composition, and by reason thereof, it is the intention of the parties and the essence of the relationship between them that the rights herein granted to the Publisher shall remain with the Publisher and that the same shall not pass to any other person, including without limitations, successors to or receivers or trustees of the property of the Publisher, either by act or deed of the Publisher or by operation of law, and in the event of the voluntary or involuntary bankruptcy of the Publisher, this contract shall terminate; provided, however, that the composition may be included by the Publisher in a bona fide voluntary sale of its music business or its entire catalog of musical compositions, or in a merger or consolidation of the Publisher with another corporation; and provided further that the composition and the copyright therein be assigned by the Publisher to a subsidiary or affiliated company generally engaged in the music publishing business. If the Publisher is an individual, the composition may pass to a legatee or distributee as part of the inheritance of the Publisher's music business and entire catalog of musical compositions. Any such transfer or assignment shall, however, be conditioned upon the execution and delivery by the transferee or assignee to the Writer of an agreement to be bound by and to perform all of the terms and conditions of this contract to be performed on the part of the Publisher.

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SUBSIDIARY DEFINED

19. A subsidiary, affiliate, or any person, firm or corporation controlled by the Publisher or by such subsidiary or affiliate, as used in this contract, shall be deemed to include any person or corporation under common control with, or the majority of whose stock or capital contribution is owned or controlled by the Publisher or by any of its officers, directors, partners or associates, or whose policies and actions are subject to domination or control by the Publisher or any of its officers, directors, partners or associates.

MINIMUMS

20. The minimum amount and percentages specified in this contract shall be deemed to be the amounts and percentages agreed upon by the parties hereto, unless greater amounts or percentages are inserted in the blank spaces provided therefor.

COUNTERSIGNATURE AND MODIFICATIONS

21. This contract is binding upon and shall inure to the benefit of the parties hereto and their respective successors in interest (as hereinbefore limited), but shall be effective only when countersigned by the Songwriters' Protective Association. If the Writer (or one or more of them) shall

not be living, any notices may be given to, or consents given by, his or their successors in interest. No change or modification of this contract shall be effective unless reduced to writing, signed by the parties hereto, and countersigned by the Songwriters' Protective Association.

MARGINAL NOTES

22. The marginal notes are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this contract nor in any way effect this contract.

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EXCEPTIONS TO WARRANTIES

23. The rights specifically excepted, as provided in Paragraph 3 hereof are as follows:

Witness: _____ Publisher _____

_____ By _____

Witness: _____ Address _____

_____ Writer _____ (L.S.)

Witness: _____ Address _____

_____ Writer _____ (L.S.)

Witness: _____ Address _____

_____ Writer _____ (L.S.)

_____ Address _____

AMERICAN GUILD OF AUTHORS & COMPOSERS
formerly
Countersigned: SONGWRITERS' PROTECTIVE ASSOCIATION

By: _____

* * * * * *

Special Exceptions to apply only if filled in and initialed by the parties.

☐ (a) The composition is:

☐ Standard ☐ Pastoral
☐ Secular ☐ Instrumental

and the Publisher is not required to publish piano copies or otherwise comply with the provisions of Paragraph 6.

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☐ (b) The composition is one of a number of musical compositions delivered to the Publisher by the Writer under an agreement dated , a copy of which is hereto annexed. Unless a shorter period is stated in the annexed agreement, the Writer shall not be entitled to demand the return of the composition for the Publisher's failure to publish regular piano copies or otherwise comply with the provisions of Paragraph 6, until five years after the expiration of the said annexed agreement.

☐ (c) The composition is part of an original score (not an interpolation) of

☐ Living Stage Production
☐ Motion Picture
☐ *Night Club Revue*

which is the subject of an agreement between the parties dated , a copy of which is hereto annexed. Unless said agreement requires compliance with Paragraph 6 in respect of a greater number of musical compositions, the Publisher shall be deemed to have complied with said Paragraph 6 with respect to the composition if it fully performs the terms of said Paragraph 6 in respect of any one musical composition included in said score.

☐ (d) The composition is not one intended to be published in regular piano copies.

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EXHIBIT 3

NEW YORK, N. Y.

In consideration of the sum of
Dollars ($), for the synchronizing rights hereinafter set forth, receipt whereof is hereby acknowledged, and Dollars ($), for the performing rights hereinafter set forth, payment for which is to be made as herein provided,
(hereinafter referred to as the Publisher), hereby gives to
its sucessors and assigns, the non-exclusive, irrevocable right and license, privilege, and authority to record, in any manner, medium, form, or language, in any country within the territory covered by this license, the words and music of the musical composition hereinbelow set out, and to make copies of such recordings, and to import said recordings and/or copies of said recordings into any country within the territory covered by this license, all in accordance with the terms, conditions and limitations hereinafter set out:

1. The composition covered by this license is:

by:

2. The title of the motion picture with which said musical composition is to be used is:
(for theatric and television-film release).

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3. The type of use to be made of the musical composition is:

and the amount of uses to be made is:

4. The license hereinabove set out is limited to the use of said musical composition in synchronism or timed-relation with the motion picture hereinabove specified, and the air, screen and television trailers thereof, during the life of the copyright of said musical composition.

5. The undersigned warrants that the said musical composition as covered by this agreement may be performed in public in theatres and other places having valid licenses from any performing right society having jurisdiction in the territory in which said musical composition is performed. However, the consideration of $ hereinabove designated for the sound film performing rights for the United States of America and its Possessions shall be paid by you to us Six (6) months from the date of this license unless prior to such time you shall have obtained a valid legal license covering such performance rights either from the American society of Composers, Authors and Publishers or from some other association or society duly authorized and which shall at that time be legally entitled to collect performance fees in the United States of America.

6. The right to perform said musical composition as recorded in said motion picture, by means of television for

any and all purposes, is and shall be available under the following circumstances:

(a) Said musical composition as recorded in said motion picture may be performed within the territory covered by this license over television networks or local stations having appropriate licenses from any performing right society having jurisdiction in the territory in which said musical composition is so performed. However, it is understood that the performing rights herein provided for shall exclude the right to perform the said musical composition in connection with the exhibition of the said motion picture by means of "closed circuit" television.

7. The territory covered by this license is:

8. The undersigned warrants only that it is the owner of the recording rights herein conveyed, and this license is given without other warranty or recourse, except for the Publisher's agreement to repay the consideration paid for this license if said warranty shall be breached; and the Licensor further reserves to itself all rights and uses in and to said musical composition not herein specifically granted.

_____

By: _____

(Agent and Trustee)

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EXHIBIT 4

PRODUCER—COMPOSERS AND LYRICISTS GUILD OF AMERICA
MINIMUM BASIC AGREEMENT OF 1960

THIS AGREEMENT, executed as of this 1st day of June, 1960, by and between COMPOSERS AND LYRICISTS GUILD OF AMERICA, an unincorporated association of composers and lyricists, hereinafter referred to as the "Guild," and

.....

hereinafter referred to as the "Producer."

WITNESSETH:

Article 1. *Definitions*

The following terms or words used herein shall have the respective meanings indicated below:

(a) A "composer" is a person who is employed by the Producer for the purpose of composing music and or lyrics for use in the production of motion picture photoplays.

(b) "Composing" is the act, process or art of creating music or lyrics or both.

(c) "Underscoring" is music composed or used to accompany dramatic action or visual images in motion pictures, but having no significance to the actors and of which the actor is not, as part of the story or plot, aware.

(d) "Song" is (i) the music and lyric of any separate musical composition of which the actors in the motion pic-

ture are aware as part of the plot or story, or (ii) the music and lyric of a separate musical composition intended to be heard by the audience.

(e) A "member of the Guild in good standing" shall be a member of the Guild who has tendered the initiation fees and periodic dues uniformly required as a condition of acquiring or retaining membership.

Article 2. *Effective Date*

The effective date of this agreement is June 1, 1960. The terms and conditions of this agreement shall not apply to individual employment contracts with composers in effect on June 1, 1960, during the term of such contracts including option extensions thereof, except however that Article 11 herein entitled "Rights Arising From Compositions" shall be applicable as of June 1, 1960, with respect to compositions which would otherwise be subject to this agreement and which are written on and after such date under such contracts.

Article 3. *Term of Agreement*

The term of this agreement shall commence on June 1, 1960 and shall continue to and including May 31, 1964. The provisions of this agreement shall continue in effect during negotiations for extension or modification of this agreement, which shall commence sixty (60) days after written notice by either party but not prior to April 1, 1964, and the new

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agreement shall be effective upon and as of a date to be agreed upon during the negotiations.

Article 4. *Recognition*

(a) This agreement shall apply only to services rendered under employment with Producer. It shall not apply to material purchased or otherwise licensed, nor to independent contractors, or supervisory employees, or to other employees whose participation in writing lyrics or music may be incidental to their bona fide employment in other capacities.

When a person is under the direction and control of the Producer as to the selection of and the manner and means by which the music for the motion picture is to be composed, he shall not be deemed to be an independent contractor. The conducting of an orchestra, as such, shall not thereby necessarily constitute such person a supervisory employee, for the purpose of this agreement.

(b) The Producer shall deliver to the Guild once each week a list of the names of composers in Producer's employ at any time during the preceding week; provided that failure on the part of the Producer to furnish any list shall not constitute a default by the Producer or a breach of this agreement, unless the Producer fails to deliver such list within seven (7) days after receiving from the Guild a written request so to do. Inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer, or a breach of this agreement.

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Article 5. *Guild Shop*

(a) During the term of this agreement, each composer employed by the Producer shall be or become a member of the Guild in good standing on or after the 30th day following the beginning of such employment, or the effective date of this Article, whichever is later.

For the purpose of this paragraph (a) of this Article 5, the date of the beginning of employment shall be the date of the first employment of such a composer with any member company of the Association of Motion Picture Producers, Inc.

The foregoing interpretation of the term "first employment" has been approved in principle by an advisory opinion of the General Counsel of the National Labor Relations Board. If such General Counsel or the local Regional Director of the Board, or the Board or a court of competent jurisdiction shall change such opinion or ruling, then the new ruling or opinion shall prevail until the same is reversed by a court of competent jurisdiction.

(b) The provisions of paragraph (a) of this Article shall not apply:

(1) To a composer who is not a member of the Guild at the time of his first employment, and who does not become a member in good standing within the 30 days, as above provided, for the period necessary to permit him to complete the performance of

his services in connection with his then current assignment.

(2) To a composer whom the Producer employs as a condition of the sale or license of material.

(3) To a composer employed by reason of special skill or knowledge.

(4) To a composer who on or before the effective date of this Article entered into an agreement with Producer and who was not on such date a member of the Guild in good standing, for the full term of such employment agreement including options, renewal periods and extensions exercisable by the Producer.

However, the composers employed by the Producer within exceptions (2) or (3) above, shall not exceed 10% of the total number of composers in the employ of the Producer. For the purpose of such computation, if the Producer has in his employ at any time less than ten (10) composers then one of such composers so employed may fall within one of the exceptions mentioned in subparagraph (2) or (3) above. Promptly following the employment of any composers claimed by the Producer to be within exceptions (2) or (3) above, the Producer will notify the Guild in writing of the name of the composer employed, the date of the employment agreement and the fact that the Producer claims that such composer is an exception hereunder.

For the purpose of such computation, a composer who is employed under an exclusive contract by a Producer shall be regarded as being employed by the Producer at all times during the term of such contract, including periods during which the composer may be on layoff and periods during which such contract may be suspended by reason of illness or default of the composer or otherwise. The composer shall be regarded as continuing in the employ of the Producer by which he is employed regardless of the fact that his services may be loaned to another Producer.

(c) Promptly after request by any person designated by the Producer, the Guild will admit such person to membership in the Guild upon terms and conditions not more burdensome to such person than those then applicable to other applicants. Membership shall be effective as of the date of such request. Guild agrees that during the term it will not impose any unreasonable initiation fee as a condition to admission to membership, and agrees that during the term hereof it will not impose upon its members any obligation to pay dues that do not uniformly apply to all members of the Guild. It is agreed that the Guild shall not close its membership books or otherwise prevent any person who wishes to become or remain a composer from becoming a member of the Guild, but on the contrary (subject to the provisions hereof relating to waivers as to members suspended or expelled) will make available the privileges of membership to any and all composers employed by the Producer. The Guild will reinstate or readmit to membership any composer who applies for reinstatement or readmission.

after being declared to be not in good standing or after suspension, expulsion, or resignation for any reason whatsoever, provided the composer will apply for such reinstatement or readmission and with such application tender to the Guild unpaid dues permitted by law, and upon such tender the Producer may employ or continue to employ such composer. Instead of readmitting or reinstating such composer, the Guild may at its option grant to the Producer a waiver as to such composer, in which event, for the purpose of determining the Producer's compliance with the provisions of this Article 5, such composer shall not be considered as being employed by the Producer.

(d) If during any time that a composer is employed by the Producer under a contract of employment such composer is or becomes a member of the Guild in good standing and if such composer shall subsequently and before his employment under such contract terminates cease to be a member of the Guild in good standing, then:

(1) If such composer has ceased or shall cease to be a member for any reason other than his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member of the Guild in good standing throughout the composer's employment under said contract of employment as the same may be extended or renewed.

(2) If the composer has ceased or shall cease to be a member in good standing by reason of his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member

in good standing for a period of fifteen (15) days after written notice that he has ceased to be a member in good standing for failure to pay dues from the Guild to both such composer and the Producer, and if, prior to the expiration of said fifteen (15) days period payment of said dues shall be made by the composer or the Producer, then for the purposes of this agreement, such composer shall not lose his status as a member in good standing. To the extent that it may be lawful for the Producer to do so the Producer may require as a condition to employment that any composer execute such written consent or consents as may be necessary so that, if the Producer elects, it may pay to the Guild any dues of any composer and the Producer shall have the right insofar as its obligations to the Guild and to any composer under the terms and provisions of this agreement are concerned, if it elects, to deduct the amount of such dues from any compensation then or thereafter due or to become due to the composer; provided, however, that if either such payment or reduction is or shall become contrary to law or any statute or is declared by any court of competent jurisdiction in the State of California or by any Federal court or the National Labor Relations Board or its General Counsel or by any other Board or individual having jurisdiction over the matter to be in violation of any applicable law or statute, and if by reason thereof Producer fails to deduct and

pay to the Guild such dues as aforesaid and shall notify the Guild thereof in writing within the fifteen (15) day period after any notice from the Guild above mentioned, then although such dues are not paid within the fifteen (15) day period for the purposes of this agreement such composer shall nevertheless be deemed to remain a member of the Guild in good standing throughout the term of the composer's employment as the same may be extended or renewed.

(3) Producer may require that if a composer shall fail or refuse to become or remain a member of the Guild in good standing as above provided, its employment agreement with such composer shall terminate.

(4) If the Producer is required or directed by any decision of a court of competent jurisdiction or any proper governmental authority to refund to any composer, in whatsoever form the same may be recovered, any dues deducted and paid to the Guild by the Producer under the provisions of subparagraph (2) of this paragraph, the Guild agrees to repay to the Producer the amount of such dues so refunded. The Guild will cooperate with the Producer in obtaining the necessary authorizations from composers for the payment and deduction of dues in the manner provided in subparagraph (2) above.

(e) The Guild will facilitate employment of its members by the Producer and will at all reasonable times promptly furnish to the Producer in writing information concerning the status of any of its members, and the Producer shall be entitled to rely upon such information so furnished by the Guild. Promptly after the execution hereof the Producer will furnish to the Guild a list of the composers then employed by it.

(f) The Guild represents and warrants that discipline, resignation, admission, reinstatement, readmission and all other matters relating to membership status will at all times during the term hereof be within the exclusive jurisdiction of the Guild; and the Guild agrees that it will exercise such jurisdiction subject to and in accordance with the provisions and intent of this Article 5 and of any other applicable provisions of this agreement.

(g) It is understood that the provisions of this Article 5 shall never under any circumstances be so construed during the term of this agreement as to constitute or permit what is known as a "closed shop" or construed in any manner that will at any time deprive the Producer of its right to employ or continue the employment of a composer who is not a member of the Guild in good standing, or who does not become a member of the Guild in good standing within the period prescribed in paragraph (a) of this Article 5 if the Producer has reasonable grounds for believing that such a membership was not available to such composer on the same terms and conditions generally applicable to other like members of the Guild, or if the Producer has reasonable

grounds for believing that membership in the Guild was denied, deferred, suspended or terminated for reasons other than the failure of such person to tender the applicable initiation fee and or periodic dues uniformly required as a condition for acquiring or retaining membership in the Guild.

Article 6. *Credits for Screen Composition*

Credit for composition is to be given for the initial use of the composed music or lyrics, but only in the motion picture for which it was specifically composed and used, subject to the following:

(a) Screen credit for composition for underscoring music, subject to this agreement, shall be given to those who actually compose the music used in the motion picture as follows:

(1) Each composer whose music composed for the picture constitutes more than one-third (1/3) of the total underscoring contained in the final motion picture, which contribution shall be determined in minutes, will be given screen credit. However, in no event shall Producer be required to give more than two such composers such credit. If one-third (1/3) or more of the total scoring used in the motion picture is by one composer, he is to receive credit even if the music was previously used, unless such composer does not desire a credit, or it would be a burden on Producer to make such a determination. In any event, credit for any such re-used music need be given by Producer to only one

composer. Producer, however, may give credit for composition underscoring to a composer whose music is less than one-third (1/3) of the total underscoring contained in the motion picture.

(2) The form of underscoring screen credit shall be:

"Music by"; or "Music Score by"; or "Music composed by"; or words of a similar nature; and in addition such other credits as may be agreed upon by the composer and Producer.

(3) The Producer shall give to the Guild and composers of the underscoring music (which is subject to credits) used in the final motion picture, notice of credits intended to be used. If no protest, that an appropriate composer has been denied the required credits, is received from them by Producer within 48 hours, excluding Saturdays, Sundays and holidays, after such notice is given, the credits shall be deemed to be final. If any such composer or the Guild should within such time protest to Producer the lack of such required credit, then the question of whether each of the composers concerned composed more than the required one-third (1/3) of the underscoring should be resolved by the composers involved and the Guild, within 96 hours, excluding Saturdays, Sundays and holidays, after such protest is made. Such a determination of the quantity of such composers contribution shall be final as to the parties involved. The authority of the Guild and such composers shall be limited to this sole issue. If no such determination

is made by the Guild and the composers within such 96 hours, the credits as submitted by the Producer shall be final. When such credits so become final, there shall be no appeal of any kind, from them. The above procedure and conditions shall be the exclusive remedy for determining any dispute arising in connection with credits hereunder for underscoring."

(b) The form of credits for songs shall be:

"New Songs by"; or "Song by"; or "Songs by"; or "Original Songs by"; or "Music & Lyrics by"; or "Words and Music by"; or "Words by and Music by"; or "Lyrics by and Music by"; or words of a similar nature; and in addition, such other credits as may be agreed upon by the composer and Producer.

(c) Notwithstanding the above provisions, Producer may give screen credit for composition to a composer who is not entitled to credit as above provided, if such composer has "box office" value.

Producers shall in good faith, make the determination of whether a composer employed by it has "box office" value, as that term is used and understood in the motion picture industry. If the Guild shall claim an abuse by the Producer, the matter shall be submitted to the Cooperative Comittee.

(d) The Producer shall not be limited as to the size or placement of the credit.

(e) With respect to material purchased or otherwise licensed, Producer shall have the unlimited right, as it may see fit, to give or not give screen credit for the composition of music or lyrics in any manner.

(f) If a composer, at the time of his employment or at any time thereafter, states in writing that he is not and never was a member of the Communist Party, and such representation is shown to have been false, or if a composer at any time refuses on request of Producer to make a statement as to whether he is or ever was a member of the Communist Party, or if a composer upon such request states in writing that he is a member of the Communist Party, or if a composer before the House Un-American Activities Committee or any similar duly constituted Congressional or State Legislative or executive committee, has refused to testify as to whether he is or was a member of the Communist Party, or if a composer having been subpoenaed to appear before such a committee fails or refuses to appear in response to such subpoena, the Producer shall be relieved of its obligations to the Guild under this Article 6, and shall also be relieved of any obligations to accord credit to the composer under his employment agreement.

The Producer, however, shall not be relieved of its obligation to give such credit by reason of any act or failure to act, on the part of the composer, described in the preceding sentence, if prior to the composer's employment by the Producer (i) such act or failure to act by such composer had occurred and (ii) such occurrence was known to the Producer.

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Article 7. *Cue Sheets*

Producer shall prepare for each motion picture a music cue sheet designating the composer of each cue and every part thereof indicating the nature and duration of its use in such motion picture. The cue sheet may also indicate any other information desired by Producer. Upon request of the composer, Producer will furnish one copy of the cue sheet to such composer and one copy to the Guild. If no protest is made to the Producer by the composer within 10 days after receipt by the composer, the composer shall be deemed to have waived any breach of this Article; but if a protest is so made the Producer shall correct the cue sheet if Producer agrees it is erroneous or shall refer the protest to the Conciliation Committee for determination, but such protest shall not be subject to arbitration. An inadvertent failure by the Producer under any provisions of this Article shall not be considered a breach of this agreement.

Article 8. *Force Majeure*

Suspension of payment of salary permitted by the so-called "force majeure" clause of employment agreements with composers shall be limited with respect to each continuous cause of suspension, as follows:

(a) Composers receiving the minimum compensation, may be suspended for 6 weeks without salary.

(b) Composers receiving above the minimum, but less than $1,000 per week may be suspended for 8 weeks without salary.

(c) As to composers receiving $1,000 per week or more, the matter of suspension of services and reduction of compensation shall be subject to individual negotiations between the Producer and the composer.

Article 9. *Delivery of Contracts*

Producer agrees that from and after the effective date hereof, upon the employment of any composer, such composer shall be tendered, within a reasonable length of time a written contract setting forth the terms of employment. Upon the full execution of such written employment contract, not less than two (2) copies thereof shall be delivered to the composer or his agent and either or both of such copies shall be executed by the Producer, and if both of such copies are not executed by the Producer, the copy not so executed shall be accurately conformed by an officer or employee of the Producer, who shall place upon any such conformed copy his signature or initials in form sufficient to identify such officer or employee. Upon the full execution of an employment contract between the Producer and a member of the Guild, the Producer will make available at its studio in Los Angeles County, California, a properly conformed copy of such employment agreement, which may be called for and retained by the Guild.

Article 10. *Speculative Composition*

The Producer and the Guild agree that there shall be no speculative composition, nor shall either party condone it as a practice.

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The Producer and the Guild recognize that there is possibly an area wherein the proper and constructive exchange of ideas and criticism between a composer and a Producer may be claimed by the Guild to be speculative composition. Whenever the Guild feels that speculative composition has occurred, the case will be referred to conciliation and arbitration and the Producer's intent as determined by the facts shall be an important factor in the consideration.

The Producer will not agree with any composer that the composer shall write on speculation or that payment shall be contingent upon the acceptance or approval of the Producer, except that this does not limit the submission of original composition or prevent the Producer from discussing with any composer any ideas suggested by such composer; or discussing with any composer any ideas or any material suggested by the Producer in order to determine the composer's thoughts and reactions with respect to any such idea or other material for the treatment or development thereof. Without in any way limiting the free exchange of ideas and constructive suggestions in connection with the submission of material by a composer to the Producer, and without limiting the composer's right to revise the material as a result of such exchange of ideas, the Producer and the composer will not, in the absence of a contractual relationship, engage in revising such material under continuous direction and supervision by the Producer.

It is understood that if a Producer enters into an agreement with any person who undertakes to compose material

on an Independent Contract or similar basis and the Producer pays such person a separate consideration and receives therefor an option or right of first refusal to acquire the Motion Picture or other rights in such material when completed, neither such agreement, nor the consummation thereof by the acquisition of such rights shall constitute a violation of the provisions of this Article 10.

Article 11. *Rights Arising From Composition*

(a) As used in this Article 11, the following terms shall have the following meanings:

"Compositions" means any and all music and lyrics written, composed, submitted, added, improvised, interpolated or invented by the Composer in the course of his employment by the Producer.

"Society" means any performing rights society, or other collection agency or organization, which, either directly or through affiliates, maintains a regular system of collecting fees from the users of Compositions for the privilege of performing the same in public for profit, for the benefit of both composer-members and publisher-members, and which divides its aggregate net collections of such fees equally between its publisher-members and composer-members, or which has agreed in writing to divide its net collections with respect to performances of the Compositions involved equally between the Composer and the publisher, hereinafter referred to.

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"Performing Rights" means those public performing rights which are, from time to time, as a practical matter, administered and controlled by the Society involved.

(b) The Producer, as employer for hire of the Composer, is entitled to and shall own all rights of every kind and character, without any restriction, limitation or reservation whatsoever, in and to the Compositions, and the copyrights therein, and any and all renewals and extensions of such copyrights everywhere in the world, specifically including the copyrights and all renewals and extensions thereof in the United States. Without limiting the generality of the foregoing, it is specifically understood and agreed that included in the ownership of all rights of the Producer in and to the Compositions is the specific and irrevocable right under any and all circumstances, in perpetuity, to perform publicly for profit, or otherwise, and to authorize others so to do (by any and all present and future methods and means of public performance, whether or not now known or contemplated) the Compositions, or any part or parts thereof, throughout the world. Such rights include, but are not limited to, the Performing Rights, as hereinabove defined.

(c) In order to assure the Composer of participation in the revenue which may be derived from performances of the Compositions, Producer agrees that in the event the Composer is, on the date of his employment by Producer, a member or licensor of a Society, Producer will, and it does hereby, transfer and assign the world-wide Perform-

ing Rights (as hereinaboye defined) in and to the Compositions to the Composer and a publisher of Producer's choice, which publisher may, but need not, be a subsidiary or affiliate of Producer, but which publisher shall be a member or licensor of the same Society, or of an affiliate of the same Society, as the Composer. Notwithstanding anything herein contained, however, there is hereby excepted and reserved from said transfer and assignment the non-exclusive right to perform the Compositions in any and all situations, throughout the world, where it is, or may from time to time be, unlawful for the Society or any of its affiliated bodies to collect performance fees, or where the Society, or any of its affiliated bodies, does not, from time to time, for any reason whatsoever, actually maintain a regular system of collecting performance fees. In any and all such situations, the Producer may authorize the performance of the Compositions in and as a part of the motion picture in which they are included and trailers thereof, or otherwise, without payment of any performance fees whatsoever to the Composer, or to the Society, or to the publisher or anyone else.

(d) The Producer has agreed to and does hereby transfer and assign the Performing Rights, as set forth in Paragraph (c) above, only conditioned upon and subject to the following:

(1) That the motion pictures (including trailers) and copies thereof containing the Compositions may be exhibited at any place in respect of which there is

subsisting a valid license granted by the Society or by one of its affiliated bodies (as the case may be).

(2) That no such license shall be required for performing the Compositions:

(i) for the purpose of reproducing the same in synchronism or time relation with the motion pictures and copies thereof during the production thereof;

(ii) in any of the situations referred to in Paragraph (c) hereof with respect to which Producer reserves the non-exclusive right to perform the Compositions.

(3) That if the proprietor or licensee of any place capable of being licensed by the Society or one of its affiliated bodies fails or neglects to hold a license, as aforesaid, the right of the Society, or of the affiliated body concerned, shall be against such person exclusively.

(4) That, under no circumstances, shall the Society, or any of its affiliated bodies, or the Composer or any successor in interest of the Composer, or the publisher have the right to take any proceedings in respect of any unlicensed performance that would have the effect of enjoining and/or preventing and/or otherwise interfering with the public performance anywhere in the world and by any means

or method now or hereafter known of the motion pictures or any portion thereof or any trailer thereof with the Compositions included therein, nor shall the Producer or the publisher be liable to the Composer for any action that the Society or any of its affiliated bodies may or may not take in administering the Performing Rights or for any payments that the Society may or may not make to the Composer.

(5) That the Compositions need not be published as a condition of the payment of the publisher's share of performance fees.

(6) That neither the Producer nor the distributor nor the publisher shall, under any circumstances, be liable to the Composer or his successors in interest, or to the Society or its affiliated bodies, nor shall the Producer or the distributor be liable to the publisher, for any payment of any sums by reason of performance of the Compositions as contained in the motion pictures, or otherwise.

(7) That under no circumstances shall the Composer or his heirs, executors, administrators or other personal representatives, agents or assigns have the independent right to license performances of the Compositions as included in the motion pictures or trailers thereof, or to otherwise interfere in any way with the distribution and exhibition of such motion pictures containing the Compositions.

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(8) That if, after the transfer and assignment referred to in Paragraph (c) hereof, the Composer should resign from or cease to be a member or licensor of the Society, the Performing Rights in and to the Compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the publisher remains a member of said Society; that if, after said transfer and assignment, the publisher should resign from, or cease to be a member or licensor of the Society or an affiliate of the Society, the Performing Rights in and to the Compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the Composer remains a member of said Society; and that if, after said transfer and assignment, both the Composer and the Publisher shall no longer be members or licensors of the Society or the Society should cease to exist or function, then the Performing Rights in and to the Compositions involved shall revert to the Producer.

Notwithstanding the transfer and assignment referred to in Paragraph (c) hereof, it is agreed that the Publisher shall always have the right to transfer the Performing Rights acquired by it pursuant thereto to another publisher which is a member of the same Society, and the Producer shall always have the right to cause the Performing Rights to be transferred to another publisher which is a member of the same Society.

(c) That for the purpose of protecting the motion picture in which any Composition is used or to be used, the Producer or the Publisher shall always have the right to impose restrictions upon the performance of such Composition apart from such motion picture.

Article 12. *No Strike Clause*

The Guild agrees that during the term hereof it will not call or engage in any strike, slowdown or stoppage of work affecting motion picture production against the Producer.

The kind of strike referred to hereinafter in this paragraph is a strike called, either (a) pursuant to the written vote therefor of 66⅔% of the vote of active members of the Guild voting on the question at a meeting (called on at least two days advance written notice of the taking of a strike vote) or, in a mail vote; or (b) with the written assent of 66⅔% of the active members of the Guild without a meeting or mail vote.

If, after the expiration or other termination of the term of this contract, the Guild shall call a strike against any producer, then each respective then current employment contract of composer members of the Guild (hereinafter for convenience referred to as "members") with such Producer shall be deemed automatically suspended, both as to service and compensation, while such strike is in effect, and each such member of the Guild shall incur no liability for breach

of his respective employment contract by respecting such strike call, provided such member shall promptly, upon the termination of such strike, and on the demand of the Producer, perform as hereinafter in this paragraph provided, and the member shall be deemed to have agreed as follows:

(a) That if the composer has been assigned to the composition of the music or lyric for a motion picture at the time any such strike is commenced, he will, after the termination of such strike and upon the request of the Producer, report to the Producer and perform his services in the completion of such assignment at the same salary and upon the same terms and conditions as were agreed upon prior to the commencement of said strike.

(b) That he will immediately, after the termination of such strike and upon the request of the Producer, execute a new contract on the same terms and conditions, and at the same salary or other compensation as provided in the employment contract which was in effect at the time the strike commenced, except that such new contract shall be for a period or periods, including options, equivalent to the unexpired term of the contract which was in effect when such strike was commenced.

(c) That he will, in lieu of (b), after the termination of such strike, at the option of the Producer, and upon its demand, execute an agreement in writing

with the Producer extending the term or period of such personal service contract in effect when such strike was commenced for a period of time equal to any suspension by such strike.

If the member shall fail to perform the foregoing, or if he shall fail actually to finish his services in the assignment mentioned in (a), as provided in (a) (except by reason of his death, physical disability or default by the Producer), then the waiver of liability by the Producer heretofore given shall be null and void.

The member further agrees that the statute of limitations as a defense to any action by the Producer against the member for his failure to perform during such strike is extended by a period equivalent to the duration of such strike and the period of the strike shall not be considered a period of laches. If the member asserts any claim or defense by reason of the expiration of time during which he can be required to perform services by virtue of any statute (such as the seven year statute) which claim or defense is based in whole or in part on the lapse of time during such strike, the waiver by the Producer is ineffective thereupon, and the statute of limitations as to the Producer's rights is waived by the member automatically.

The automatic suspension provisions of this paragraph shall not affect the Producer's right to sue any individual composer for breach of contract arising during the period of such strike, unless such composer shall have complied with his obligations under the provisions of this paragraph.

Nothing herein contained shall be construed to deprive the Producer of its right to terminate the employment contract at any time after such member shall strike or otherwise fail or refuse to perform services.

The provisions of this paragraph shall be deemed included in all employment contracts between composers and Producer which are now in effect and all such employment contracts which shall be entered into during the effective term of this collective bargaining agreement.

The Guild agrees that it will take such affirmative actions as may be necessary and lawful in order to require its members to perform their respective obligations under the provisions of this paragraph.

Notwithstanding the expiration or other termination of the term of this collective bargaining agreement, by termination or otherwise, the provisions of this paragraph shall be and remain in full force and effect for a period of seven (7) years following the termination of any such strike, unless this covenant be sooner terminated by the written consent of Producer and Guild.

No officer, agent, director or member of the Guild shall be liable for any strike, slowdown or work stoppage, unless the same be authorized by the Guild in accordance with its by-laws. However, any officer, agent, director or member who affirmatively participates in, procures or induces the strike, slowdown or work stoppage, contrary to the terms of this agreement, shall not be immunized from liability by reason of the provisions of this Article. Provided, further

that the foregoing exemption of the first sentence above shall not apply unless the Guild upon request from the Producer affected thereby shall proclaim promptly and publicly that such strike, slowdown, or work stoppage is unauthorized, and follows such pronouncement within a reasonable time thereafter, if requested so to do by the Producer affected, with disciplinary proceedings in accordance with its by-laws against the participants in such unauthorized action.

Producer agrees it will not call or engage in any lockouts of members, during the term of this agreement.

Article 13. *Location Expenses*

If a composer is required by the Producer to perform services on any location sufficiently far away from the Producer's studio so that overnight accommodations are reasonably necessary, the Producer shall furnish and pay for the reasonable board and lodging of the composer while required to remain on any such location, and agrees to furnish for the composer first-class transportation, if available, to and from any such location, it being understood that such first-class transportation need not include a drawing room or compartment or passage on any so-called "extra fare" train, and the Producer may in any contract of employment between the Producer and a composer designate a reasonable daily maximum liability on the part of the Producer for such board and lodging of the composer.

In addition, Producer shall furnish at such location a musical instrument and such mechanical reproducing and

playback instruments as may be necessary or required in connection with his composition.

Article 14. *Conciliation Committee*

(a) The Producer and the Guild agree that prior to submitting to conciliation any matter properly a subject of conciliation hereunder, an authorized representative of the Guild and an authorized representative of the Producer will meet and in good faith attempt to settle and adjust the difference or dispute. If such representatives fail to settle or adjust the difference or dispute within seven (7) days after the matter has first been brought to the attention of the party not making the claim, such matter may be brought to the attention of the conciliation committee by either party hereto in the manner hereinafter described.

(b) Each Producer and the Guild will set up a Permanent Conciliation Committee consisting of six (6) members selected as follows:

(1) The Guild will promptly designate three (3) members in good standing and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify the Producer for which such committee is organized. The Guild may designate separate representatives for each Producer signatory, but need not do so.

(2) Each Producer will promptly designate three (3) representatives and as soon as so designated, and

in no event later than fifteen (15) days after the execution of this agreement, will in writing notify the Guild thereof. Each Producer signatory hereto may designate its own separate representatives or it may designate those named by any other Producer or Producers signatory hereto. The Producer and the Guild may, from time to time, make substitutions for any of their representatives by notice to the other party.

The Conciliation Committee will be maintained at all times during the life of this agreement. Promptly after the Committee has been constituted it shall select a chairman whose term of office shall be one (1) year. During the first year of the term hereof the chairman of the committee shall be a representative of the Guild and during the second year of the term hereof the chairman shall be a representative of the Producer, and the chairmanship shall alternate in like manner thereafter. If either party hereto desires to bring to the attention of the Conciliation Committee any matter properly a subject of conciliation he will serve upon the other party and the chairman of the committee a written notice thereof, which notice shall contain a statement of all matters to be submitted for consideration by the committee. The Chairman of the committee shall within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) call a meeting of the committee by written notice served upon each of the members and shall allow a reasonable time, not to exceed fifteen (15) days, between the time of such

call and the time designated for such meeting. The date designated for such meeting may, however, be continued at any time or from time to time with the joint consent of the chairman, who shall be a representative of one of the parties hereto as aforesaid, and any one other member of the Committee who is a representative of the other party. The notice of call of any meeting issued by the chairman shall contain a statement of all matters submitted for consideration by the Committee and the Committee shall not consider or act on any unrelated matter or matters. The Committee shall meet as above provided, consider and act upon all matters properly submitted, and if a decision is concurred in by any five (5) members of the Committee the same shall be the decision of the Committee and shall be final and binding upon the parties to the proceeding. If the Committee shall fail to meet and commence hearings or deliberation upon any matter submitted to it upon the date designated as above provided for such meeting or within a period of fifteen (15) days from the time of such call, whichever is the later, or if five (5) members of the Committee shall fail to concur in a decision within fifteen (15) days after first hearing unless otherwise mutually agreed, or if hearing is waived by both parties hereto, after final submission of any matter, the Committee shall lose jurisdiction to act upon the matter so submitted. If the Committee shall lose its jurisdiction over any matter in the manner above provided, then either party hereto may submit such matter to arbitration. Such submission shall be made by written notice, requesting such arbitration, delivered to the other

party hereto, and in such event arbitration thereof shall be had in the manner hereinafter provided.

Article 15. *Matters Subject to Conciliation and Arbitration*

It is expressly understood and agreed that the following matters, and only the following matters may be submitted to the Conciliation Committee and thereafter to arbitration, as herein provided:

(a) Any difference between the Guild and the Producer concerning the interpretation of any of the terms of this agreement and its application and effect as determined by an interpretation hereof.

(b) Any alleged default or breach of any of the terms or provisions of this agreement on the part of either party hereto. It is agreed that neither party hereto shall, except before the committee and Board of Arbitration herein provided, claim a default or breach of any of the terms or provisions hereof on the part of the other party hereto or take any action of any nature at law, or otherwise, based upon or in reliance upon the commission or existence of such default or breach until the fact of such default or breach has been determined by a decision of the Conciliation Committee, or by arbitration, as hereinafter provided, in the event the Committee loses jurisdiction over the matter, and then only in the event the party found to have been in default fails to cure the same within the period designated therefor as hereinafter provided. If either party shall in writing notify the Committee or the Board, as the case may

be, or the other party to such conciliation or arbitration, that such party does not or will not honor or recognize, as to the alleged default or breach, the decision of the Committee or Board, then as to such party refusing to honor or recognize, the other party is relieved from the obligation to delay taking any action which it may desire. Likewise, if the Committee or Board shall formally decline jurisdiction, then each party is also relieved from the obligation to delay taking any action which it may desire. If the Committee or the Board of Arbitration hereinafter provided for shall find a default or breach of any of the terms or provisions of this agreement on the part of either party hereto it shall specify in writing the nature and extent of such breach or default and, if it finds that the default or breach can reasonably be cured, shall designate the manner in which such party, at its option, may cure such breach or default, and a reasonable time within which the party in default may cure such default and if such default is cured within the time so specified then for the purposes hereof such default shall be deemed not to have been committed and the party claiming such default may not take any action of any nature at law or otherwise in reliance upon the commission or existence of such default.

It is expressly understood and agreed that there is to be no conciliation or arbitration of any individual disputes between the Producer and any composer and that no determination or decision made by the Conciliation Committee or by arbitration, as herein provided, shall affect the rights of the Producer as against any composer or the rights of

any composer as against any Producer, but shall only control and be binding upon the Producer and the Guild in relation to their rights as against each other. Nothing herein contained shall require any Producer or any composer that are parties to a dispute with respect to or concerning any employment to submit such dispute to conciliation or arbitration hereunder of be construed so as to prevent immediate recourse to the courts by either party to such dispute. The decision of a court as to a controversy between a composer and the Producer shall not limit the power of the Conciliation Committee or Board of Arbitration to decide any related controversy between the Guild and the Producer that may properly be submitted to conciliation hereunder. The Conciliation Committee or Board of Arbitration may, in determining any dispute between the Guild and the Producer properly the subject of conciliation hereunder decide that a Producer or composer has violated the terms of this agreement in any transaction, but such decision shall not give the other party to such transaction any rights against the offending party. Neither the Conciliation Committee nor the Board of Arbitration shall have the power to declare any breach or default with respect to any contract of employment between the Producer and any composer. It is explicitly understood between the parties hereto that, in the event of any breach of the provisions of this agreement by Producer, which may also involve a breach of a contract of employment with one or more composers in the employ of the Producer, the Guild shall not have the right to submit to conciliation or arbitration here-

under any claim or demand of any such composer or composers against the Producer for damages, breach of contract, termination of contract or of any other nature whatsoever either as the agent, trustee, assignee or representative of such composer, or in any other capacity; but in such case the Guild shall nevertheless have the right to submit to conciliation and arbitration the claim of the Guild of a breach of the provisions of this agreement by the Producer, it being understood and agreed that the Guild shall have the right to conciliate and arbitrate a claim of the Guild of a default or breach by the Producer of any of the terms or provisions of this agreement regardless of whether or not such claimed default or breach may also involve a breach by the Producer of a contract of employment with a composer.

It is further acknowledged and agreed that in such circumstances:

(1) The fact that conduct of the Producer which is claimed to be a breach of this collective bargaining agreement shall also be claimed by a composer to constitute a breach of an individual contract of employment between the Producer and such composer, shall not preclude the Guild from seeking and obtaining arbitration hereunder with reference to the dispute between the Producer and the Guild;

(2) The fact that Producer's conduct constitutes a breach of an individual contract of employment shall not preclude the arbitrators from determining

that such conduct also constitutes a breach of Producer's obligations under this agreement.

Article 16. *Arbitration*

In the event of any arbitration hereunder a board of arbitration for the Guild and each Producer, consisting of three (3) members, shall be selected as follows: One arbiter shall be selected by the Guild and one arbiter shall be selected by the Producer. The third arbiter shall be chosen by mutual agreement of the two first selected, failing such agreement, by lot from an authorized list of eligible arbiters. Each Producer signatory hereto may designate its own arbiter or it may designate an arbiter named by any other Producer or Producers signatory hereto. Each party hereto shall designate its arbiter within seven (7) days after written notice of the loss of jurisdiction of the Conciliation Committee over the matter to be submitted to arbitration and the desire of the party serving such notice to submit such matter to arbitration. If either party hereto should fail to select its arbiter within the period above mentioned the other party may, at its option, treat such failure as a repudiation by such party so failing of the Board's jurisdiction to decide the matter or matters submitted, or may cause an arbiter to be selected for the party so failing, in the manner provided by the Code of Civil Procedure of the State of California. All arbiters may be interested persons but not personally or directly interested in the matter under dispute. The decision of a majority of the arbiters on any

subject herein permitted to be arbitrated shall be final and binding upon the parties to such arbitration.

Each party to this agreement shall pay his own costs of any conciliation proceeding and the Board of Arbitration shall have the right to assess the costs of an arbitration proceeding between the parties to such arbitration in such manner or in such proportions as the Board may deem proper, and in the event the Board fails to assess such costs the Producer or Producers party to such arbitration shall bear one-half (½) thereof and the Guild shall bear the remaining one-half (½) thereof. The Board of Arbitration and any Conciliation Committee above mentioned may make such rules of procedure and conduct their proceedings in such manner as they shall determine to be proper; provided, however, that in any event each party to any conciliation or arbitration shall be afforded a reasonable opportunity to present evidence and argument to the Committee or Board.

All hearings, deliberations and proceedings of the Board of Arbitration and of the Conciliation Committee hereinabove mentioned shall be closer to the public. Only members of the Guild and Producers signatory hereto and their authorized representatives or witnesses called may attend. All communications to and from the Board of Arbitration or the Conciliation Committee shall likewise be absolutely privileged.

The authorized list of arbiters approved by the parties hereto is as follows:

Ben Aaron
Professor Kingsley
Sheldon Elliot

Such list shall be revised by mutual consent from time to time until there are ten names on such list, and may be revised by mutual consent thereafter from time to time.

Article 17. *Minimum Compensation*

(a) Definition of a qualified composer and song writer:

(1) A qualified composer of underscoring is a composer who has screen credit for one feature length picture or 52 weeks of employment in the motion picture industry, as a composer of underscoring.

(2) A qualified song composer is a composer who has two published songs or who composed two separate songs each of which is completely contained in a motion picture produced and released in the American motion picture industry or who has had 52 weeks of employment in the American motion picture industry as a composer of either or both song music or song lyrics.

(b) *Wage Scale Minimum Compensation*

(1) There are no minimum compensation requirements with respect to unqualified composers.

(2) The minimum compensation for a qualified Composer for composition only, shall be:

Term contract: $325 per week.
Week to week: $350 per week.

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The above salary shall commence and apply when an assignment is made under the Producer's direction and control.

For these purposes, a term contract is a personal service contract for a term of at least ten out of thirteen weeks or any like ratio for a longer period. A week-to-week contract is a personal service contract for a term of less than ten out of thirteen weeks. A composer employed on a weekly basis, may be terminated at any time after one week.

If any composer under a week-to-week or term contract shall render services after the expiration of the period for which his specified compensation is provided in the employment contract and no additional amount is specified for such additional period, then in such event the composer shall receive the weekly rate specified in such contract for each week, or, for purpose only of prorating days worked in a partial work-week, (of less than six (6) days), one-fifth (1/5) for each such a day worked during which the composer shall render such additional services. In any week of employment when the Producer may under this agreement employ the composer for less than one full week (i.e. after one week or after the term of the agreement), if the composer shall render services in composition and also other services not covered by this agreement his minimum compensation for composition shall be prorated in proportion

to the amount of time required by Producer for composition.

Any amounts paid to the composer in excess of the minimum compensation, as provided above, may be applied to any other payments required under this agreement.

Article 18. *Recognition of Agreement*

The Guild agrees that it will take proper steps to provide that its by-laws carry this agreement into effect and that, during the term of this agreement, it will not maintain or adopt any articles or by-laws or any rules or orders which will be in conflict with this agreement. The Guild shall cause its by-laws to provide that each of its members shall be bound by the provisions of this agreement. The Guild represents and warrants that at all times during the term hereof it will have exclusive jurisdiction over the matters and procedures necessary to carry out the purposes and intent of the foregoing provisions of this Article 18 and over all other covenants and agreements to be kept or observed by the Guild pursuant to this agreement. The Producer will not either alone or in concert with any other Producer signatory to a similar agreement with the Guild take any action of any kind that will interfere with the performance of this agreement on the part of the Producer or violate the provisions of this agreement.

Article 19. *Agreement Binding Upon Whom*

This agreement shall be binding upon the Producer and its subsidiaries in which it has a fifty percent (50%) or more financial interest and all parties who by reason of mergers, consolidation, reorganizations, sale, assignment or the like shall succeed to or become entitled to a substantial part of the business of Producer.

Producer agrees to notify the Guild within seven (7) days after it executes an agreement with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the use of its studio for the production of a theatrical motion picture. Producer further agrees to notify the Guild within fourteen (14) days after it executes an agreement in the County of Los Angeles, California, with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the production, distribution or release of a theatrical motion picture where Producer's studio is not used for the production of such picture; such notice to the Guild shall contain the name and address of such person, firm or corporation as well as the name of the person who signed the agreement on behalf of such person, firm or corporation. An inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer or a breach of this agreement.

Article 20. *Motion Pictures To Which Agreement Not Applicable*

It is understood that the provisions of this agreement shall not apply to newsreels, shorts, advertising shorts,

trailers, travelogues, commercial films or news of sports commentations.

Article 21. *Geographical Application of this Agreement*

Notwithstanding anything to the contrary herein contained, it is specifically understood that this agreement shall apply only to composers whose contracts of employment were executed within the continental limits of the United States (excluding Alaska) regardless of the place of performance of services thereunder and shall apply only to such contracts of employment.

Article 22. *Minimum Terms*

The terms of this agreement for the benefit of the composer are minimum terms; nothing herein contained shall prevent any composer from negotiating and contracting with any Producer for better terms for the benefit of such composer than are herein provided.

Article 23. *Producer-Composer Cooperative Committee*

Within fifteen (15) days after the execution of this agreement there shall be established a committee to be known as the Producer-Composer Cooperative Committee, composed of not less than sixteen (16) members representative of the Producer and the composer, eight (8) of whom shall be named by the Producer signatories hereto and eight (8) named by the Guild. It is understood that any group of seven (7) or more Producer signatories hereto may establish a separate committee for the purposes hereof, and

the Guild will name members to meet with each such committee. Such committee or committees shall meet at least once every sixty days. Deliberations shall be wholly informal and any and all matters affecting the operation and application of this contract, and the promotion of a harmonious Producer-Composer relationship shall be fully and freely discussed. Every effort shall in good faith be made by all members of the committee to prevent abuses from arising under this agreement, to eliminate inequities and to promote cooperation between and mutual understanding of the problems of employer and employee.

Article 24. *Jurisdictional Disputes*

The Guild agrees to cooperate in good faith with the Producer and with other guilds and organizations representing employees of the Producer in working out a method for the determination of jurisdictional disputes without work stoppages.

Article 25. *Pension Plan*

Producer and the Guild agree to immediately make application to become parties to, and if accepted, to be bound by the provisions of the "Motion Picture Industry Pension Plan" (hereinafter referred to as the "Pension Plan") made as of October 26, 1952, with respect to the employees covered hereunder.

In accordance with Article III, sections 2 and 3, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans,

the Producer shall, for the period commencing with June 1, 1960, to and including January 30, 1961 pay into the Pension Plan a total of four dollars and thirty-two cents ($4.32) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer in such period, under the terms of this agreement, excluding layoffs, suspensions or vacations, or eighty-eight cents (88¢) for each weekday worked or guaranteed in a fractional workweek; the Producer shall, for the period commencing with January 31, 1961, and for the balance of the term of this agreement pay into the Pension Plan a total of six dollars and twenty-one cents ($6.21) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after January 31, 1961, under the terms of this agreement, excluding layoffs, suspensions or vacations, or one dollar and twenty-seven cents ($1.27) for each weekday worked or guaranteed in a fractional workweek.

In accordance with Article III, sections 4 and 5, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, every employee covered by this agreement shall for the period commencing with June 1, 1960, to and including January 31, 1961, pay into the Pension Plan two dollars and seventy cents ($2.70) for each full workweek guaranteed such employee by Producer or for each full workweek such employee works for Producer during such period under the terms of this agreement; excluding layoffs, suspensions or vacations, or fifty-five cents (55¢) for each such weekday

worked or guaranteed such employee in a fractional workweek. Every employee covered by this agreement shall, for the period commencing with January 31, 1961, and for the balance of the term of this agreement pay into the Pension Plan three dollars and seventy-eight cents ($3.78) for each full workweek guaranteed such employee by Producer or for each full workweek such employee works for Producer on or after January 31, 1961, under the terms of this agreement, excluding layoffs, suspensions or vacations, or seventy-seven cents (77¢) for each such weekday worked or guaranteed such employee in a fractional workweek. On and after May 21, 1961, Producer shall deduct daily or weekly from the compensation of such employees, as the case may be, the amount of such contribution due from such employee, as above provided, which deduction shall be paid by Producer into the Pension Plan on behalf of such employee as the employee's contribution to the Pension Plan, as herein required.

The above contributions are in accordance with the present pattern of contributions by Employers and Employees required under the Pension Plan. In the event the present pattern of contributions under the Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of Employer and Employee contributions established under such Pension Plan.

Such money paid by Producer into the Pension Plan, shall not constitute nor be deemed to be wages due to the

individual employee subject to this agreement, nor shall said money paid into the Pension Plan, in any manner be liable for or subject to the debts, contracts, liabilities or torts of such employees.

Producer shall be obligated to make its contribution to the Pension Plan, for any such respective employee, as provided above, only as, if and when such respective employee has contributed to the Pension Plan the amount required from him, as provided above. In the event such employee does not pay to the Pension Plan by June 30, 1961, his contributions due for the period from June 1, 1960, to and including May 20, 1961, then the Producer shall not be liable or obligated to make its respective contribution to the Pension Plan for such employee for such period, as above provided.

Article 26. *Industry Pension Plan Retirees Health and Welfare Coverage*

Subject to the parties hereto becoming parties to the Industry Pension Plan as provided in Article 25 above, Producer shall pay into the Industry Pension Plan through its Administrator, as Agent for transmittal to the Industry Health and Welfare Fund, the following:

(a) For the period commencing with June 1, 1960, to and including January 31, 1961:

Eighty-one cents (81¢) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer dur-

ing such period under the terms of this agreement, excluding layoffs, suspensions, or vacations, or sixteen and one-half (16½¢) cents for each such weekday worked or guaranteed in a fractional workweek.

(b) For the period commencing January 31, 1961, and for the balance of the term of this agreement:

One dollar and eight cents ($1.08) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after January 31, 1961, under the terms of this agreement, excluding layoffs, suspensions, or vacations, or twenty-two cents (22¢) for each such weekday worked or guaranteed in a fractional workweek.

The above contributions are in accordance with the present pattern of such contributions by employers to the Industry Pension Plan Administrator. In the event the present pattern of such contributions to the Industry Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of employer contributions as indicated by such Industry Pension Plan.

The money received by the Administrator of the Industry Pension Plan from such payment, as above provided, shall be kept separate and apart from any funds of the Industry Pension Plan, and shall be paid to the Industry Health and Welfare Fund upon demand by the Health and

Welfare Fund. The Health and Welfare Fund shall establish a special reserve fund into which such money shall be placed for the purpose of providing, under proper conditions, for such Health and Welfare coverage as the Trustees of the Health and Welfare Fund may determine to be appropriate for the employees retired under the Industry Pension Plan.

Such money paid by Producer to the Administrator of the Industry Pension Plan for transmittal, shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid into the Industry Pension Plan, in any manner, be liable for or subject to the debts, contracts, liabilities, or torts of such employees.

Producer shall be obligated to make such contribution to the Administrator of the Industry Pension Plan for transmittal, for any such respective employee, as provided above, only as, and if such respective employee has contributed to the Industry Pension Plan the amount, and within the time required of him, as provided above in Article 25.

Article 27. *Significance of Titles and Sub-Titles*

The headings of Articles, sections and other subdivisions hereof are inserted for the purpose of convenient reference, and it is recognized that they may not adequately or completely describe the contents of the provisions that they head. Such headings shall not be deemed to govern, enlarge, limit, modify or in any other manner affect the scope,

meaning or intent of the provisions of this agreement or any part or portion thereof; nor shall they otherwise be given any legal effect.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

.....

By .....

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By .....

Petitioners' Offer of Proof, Filed April 17, 1962

June 29, 1961

Allied Artists Productions, Inc.
Columbia Pictures Corporation
Walt Disney Productions
Metro-Goldwyn-Mayer Inc.
Paramount Pictures Corporation
Twentieth Century-Fox Film Corp.
Warner Bros. Pictures, Inc.

Gentlemen:

Reference is made to the Producer-Composers and Lyricists Guild of America Minimum Basic Agreement of 1960, executed as of June 1, 1960, between the Guild and each of the above Producers separately and respectively (each such agreement is herein referred to as the "Basic Agreement").

This is to confirm our understanding and agreement as follows:

The Guild desires to extend the date of June 30, 1961, as provided in the last paragraph of Article 25 of said Basic Agreement, to July 30, 1961.

The last paragraph of Article 25 of the Basic Agreement of 1960 is hereby amended to read in its entirety as follows:

> Producer shall be obligated to make its contribution to the Pension Plan, for any such respective employee, as provided above, only as, if and when such respective employee has contributed to the Pension Plan the amount required from him, as provided above. In the event such employee does not pay to

the Pension Plan by July 30, 1961, his contributions due for the period from June 1, 1960, to and including May 20, 1961, then the Producer shall not be liable or obligated to make its respective contribution to the Pension Plan for such employee for such period, as above provided.

If the foregoing accords with your understanding of our agreement, please so indicate in the space provided therefor below.

COMPOSERS AND LYRICISTS GUILD OF AMERICA

s/ By Leith Stevens

Accepted and approved:

Allied Artists Productions, Inc.
Columbia Pictures Corporation
Walt Disney Productions
Metro-Goldwyn-Mayer Inc.
Paramount Pictures Corporation
Twentieth Century-Fox Film Corp.
Warner Bros. Pictures, Inc.

s/ By Charles Boren